SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 469

INCRES STEAMSHIP COMPANY, LTD.,
PETITIONER,

vs.

INTERNATIONAL MARITIME WORKERS
UNION, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF NEW YORK

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[fol. 3]

IN SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7187-1960

INCRES STEAMSHIP COMPANY, LTD., Plaintiff,

—against—

INTERNATIONAL MARITIME WORKERS UNION, SHANNON J. WALL, EDWARD POGOR, JOHN DOE and RICHARD ROE, Defendants.

NOTICE OF APPEAL TO THE APPELLATE DIVISION—June 8, 1960

Sirs:

Please Take Notice that defendants hereby appeal to the Appellate Division of the Supreme Court, First Judicial Department, from an order and judgment entered in the above-entitled action in the Office of the Clerk of the County of New York on the 7th day of June, 1960 denying defendants' motion under Rules 106(1) and 107(1) of the Rules of Civil Practice for an order dismissing the complaint on the ground that the Court has not jurisdiction of the subject of the action, and granting to plaintiff a permanent [fol. 4] injunction, and defendants appeal from each and every part of said order and judgment.

Dated: New York, N. Y.
June 8, 1960.

Yours, etc.

Cooper, Ostrin & De Varco, Office & P. O. Address: 655 Madison Avenue, New York 21, N. Y.

Miller and Seeger, Office & P. O. Address: 400 Madison Avenue, New York 17, N. Y.

Attorneys for Defendants.

To:

Donovan, Leisure, Newton & Irvine, Esqs., Attorneys for Plaintiff, 2 Wall Street, New York 5, N. Y.

Clerk of the County of New York.

[fol. 5]

At a Special Term Part I of the Supreme Court, held in and for the County of New York at the County Court House thereof in the City of New York, County of New York, State of New York, on the 7 day of June, 1960.

Present: Hon. Henry Clay Greenberg, Justice.

Index No. 7187-1960

INCRES STEAMSHIP COMPANY, LTD., Plaintiff,

—against—

INTERNATIONAL MARITIME WORKERS UNION, SHANNON J. WALL, EDWARD POGOR, JOHN DOE and RICHARD ROE, Defendants.

ORDER AND JUDGMENT APPEALED FROM—June 7, 1960

An order to show cause having been granted herein by Hon. Henry Clay Greenberg, a Justice of this Court, requiring the defendants to show cause why a preliminary injunction should not issue enjoining the defendants, their members, agents, servants and those acting in concert or cooperating with them during the pendency of this action from interfering in any way with the operation and management of the SS. *Nassau* and the MV. *Victoria*, from inciting, urging or encouraging crew members to neglect their [fol. 6] duties on board said vessels, also from maintaining, supporting, directing or otherwise aiding or abetting crew members who have left said vessels and have refused to perform their duties thereon, also from picketing said vessels for any purpose; and said motion coming regularly on to be heard on May 18, 1960; and the parties to this action by their attorneys in open court having stipulated that said motion for a preliminary injunction also be treated by this Court as an application for a permanent injunction;

Now, upon the complaint, the affidavit of Max J. Ramsden Wolfson, sworn to the 14th day of May, 1960 and of Paolo Vagliasindi, sworn to the 14th day of May, 1960, filed in support of the order to show cause herein and upon the affidavit of Shannon J. Wall, sworn to the 17th day of May, 1960 and filed in support of the notice of motion of defendants dated May 17, 1960 to dismiss the complaint herein and the issues having been tried before the court, without a jury, on said 18th day of May, 1960, the 19th day of May, 1960, the 20th day of May, 1960, and the 23rd day of May, 1960, and the plaintiff appearing by Donovan Leisure Newton & Irvine, Esqs. and defendants International Maritime Works Union and Shannon J. Wall appearing by Cooper, Ostrin & De Varco, Esqs. and Miller & Seeger, Esqs., and the parties having presented their proofs, and at the close of all the proofs the plaintiff having moved for judgment, as prayed for in the complaint herein, and defendants having moved for a judgment dismissing the complaint, and the Court after due deliberation having directed judgment in favor of the plaintiff against the defendants and denying defendants' motion to [fol. 7] dismiss the complaint, and the decision of the Court having been duly filed herein;

Now, on motion of Donovan Leisure Newton & Irvine, attorneys for the plaintiff, it is

Ordered, Adjudged and Decreed that the Court has jurisdiction of the cause and to grant the injunctive relief as prayed for in the complaint herein and the said motion of defendants to dismiss the complaint be and the same hereby is denied;

And it is Further Ordered, Adjudged and Decreed that the plaintiff have judgment against the defendants permanently restraining and enjoining the defendants, their successors, their members, agents, and servants and those persons in active concert or participation with defendants who receive actual notice of this judgment by personal service or otherwise and each and every one of them from, on and after the 10th day of June, 1960, interfering in any way with the operation and management of the SS.

Nassau and the MV. *Victoria*, from inciting, urging or encouraging crew members to neglect their duties on board said vessels, also from maintaining, supporting, directing or otherwise aiding or abetting crew members who have left said vessels and have refused to perform their duties thereon and also from picketing said vessels for any purpose.

And it is Further Ordered, Adjudged and Decreed that the jurisdiction of the Court over the claim of plaintiff for damages and for such further and other relief requested in the complaint herein as may be just and proper be reserved [fol. 8] for trial in regular course, and to that extent the claim is severed.

Enter

H. C. G., J.S.C.

(Seal)

James McGurren, Clerk.

IN SUPREME COURT OF THE STATE OF NEW YORK

ORDER TO SHOW CAUSE WITH INTERIM RESTRAINING ORDER

Upon the verified complaint herein, the affidavit of Max J. Ramsden Wolfson, sworn to on the 14th day of May, 1960, and the affidavit of Paolo Vagliasindi, sworn to on the 14th day of May, 1960, let the defendants or their attorneys show cause at a Special Term of this Court, to be held in and for the County of New York, on the 18th day of May, 1960, at 10:00 o'clock, in the forenoon of that day, or as soon thereafter as counsel can be heard, why an Order should not be made herein restraining the defendants International Maritime Workers Union, Shannon J. Wall, Edward Pogor, John Doe and Richard Roe, their members, agents, attorneys and servants and those acting in concert or cooperating with them during the pendency of this action from interfering in any way with the operation and management of the SS. *Nassau* and the MS. *Victoria;* from inciting, urging or encouraging crew members to neglect their duties on board said vessels; also from maintaining, supporting, directing or otherwise

[fol. 9] aiding or abetting crew members who have left said vessels and have refused to perform their duties thereon; also from picketing said vessels for any purpose.

And in the meantime and until the entry and service of the further order of this Court to be made upon the return of this order to show cause, it is further ordered that the said defendants International Maritime Workers Union, Shannon J. Wall, Edward Pogor, John Doe and Richard Roe, their members, agents, attorneys and servants and those acting in concert or cooperating with them, and each and every one of them be, and they hereby are, jointly and severally, restrained from interfering in any way with the operation and management of the SS. *Nassau* and the MS. *Victoria;* from inciting, urging or encouraging crew members to neglect their duties on board said vessels; also from maintaining, supporting, directing or otherwise aiding or abetting crew members who have left said vessels and have refused to perform their duties thereon; also from picketing said vessels for any purpose.

And it appearing to my satisfaction that a proper case is presented for the issuance of an Order to Show Cause in the place and stead of the usual five days' notice of motion, I do hereby order and direct that service of this Order to Show Cause and of the papers upon which the same has been granted upon the defendants on or before Noon of the 17th day of May, 1960, shall be held sufficient notice of motion herein and of the application for an injunction *pendente lite* herein.

Henry Clay Greenberg, J.S.C.

[fol. 10]

IN SUPREME COURT OF THE STATE OF NEW YORK

COMPLAINT, READ IN SUPPORT OF MOTION

Plaintiff complaining of the defendants herein alleges:

1. At all times herein mentioned plaintiff, Ineres Steamship Company, Ltd., (hereinafter called "Ineres"), was and still is a corporation duly organized and existing under the

laws of the Republic of Liberia and has its principal office in Monrovia, Liberia.

2. Upon information and belief, at all times herein mentioned the defendant International Maritime Workers Union (hereinafter called "IMWU") is an unincorporated association, the membership of which includes both United States citizens and citizens of foreign nations, with its office and place of business at 265 West 14th Street, New York 11, New York.

3. Upon information and belief, the defendant Shannon J. Wall is the President of IMWU and a resident of the State of New Jersey; the defendant Edward Pogor is a representative of IMWU whose residence is unknown; and the defendants John Doe and Richard Roe are fictional persons representing herein officers, representatives and members of IMWU. The above-named individual defendants at all times herein mentioned dominated, directed and controlled, and still dominate, direct and control the activities of IMWU.

4. Upon information and belief, at all times hereinafter mentioned Federazione Italiana Lavoratori Del Mare [fol. 11] (hereinafter referred to as "Federazione"), was and still is a maritime labor organization existing under the laws of the Republic of Italy for the purpose of representing Italian seamen with respect to wages, terms and conditions of employment, and the aid and protection of its members.

5. At all times hereinafter mentioned plaintiff was and is the owner of the SS. *Nassau* and MS. *Victoria*, both ocean-going passenger cruise vessels operating on scheduled routes. The SS. *Nassau* operates on a weekly schedule and engages primarily in the transportation of passengers for hire between the ports of New York, New York and Nassau, British West Indies. The MS. *Victoria* engages primarily in the transportation of passengers for hire between the ports of New York, New York, and foreign ports in the Caribbean area.

6. At all times hereinafter mentioned both the SS. *Nassau* and MS. *Victoria* were and are duly registered

under the laws of the Republic of Liberia and fly the Liberian flag.

7. Upon information and belief, on or about May 13, 1960 the SS. *Nassau* lawfully entered the Port of New York and docked at Pier 42, North River, New York City, where it presently remains. The MS. *Victoria* is scheduled to arrive at the Port of New York and dock at Pier 42, North River, New York City, on or about May 15, 1960.

8. Upon information and belief, on or about May 13, 1960 when the SS. *Nassau* entered the Port of New York, [fol. 12] plaintiff employed more than 230 crew members on board the vessel. At all times hereinafter mentioned, all of the crew members were and are Italian citizens with the exception of the Cruise Director and Staff Captain who were and are United States citizens, a Steward who was and is a Spanish citizen, a Nurse who was and is a Swiss citizen, and a Laundryman who was and is a Chinese citizen.

9. Upon information and belief, at all times hereinafter mentioned each of the crew members on board the SS. *Nassau* was and is serving under Liberian Articles of Agreement opened and executed in Genoa, Italy, on or about November 27, 1959 and which at all times since and now are in full force and effect and will be in full force and effect for a period not exceeding one year from said 27th day of November, 1959 or until the termination of the 1960 cruise period for the SS. *Nassau* which will terminate during the month of September, 1960. The Articles of Agreement deal with the employment of the crew members of the vessel and their wages, working conditions, food and other aspects of their employment.

10. Upon information and belief, at all times hereinafter mentioned a large proportion of the crew members who were and are employed on board the SS. *Nassau* were and are members of the Italian union, Federazione, and the employment contracts entered into by said crew members correspond to the Italian National Contract approved by Federazione and that said crew members enjoy pension and illness benefits similar to those enjoyed by other Italian seamen.

11. Upon information and belief, on May 13, 1960 early in the morning representatives of IMWU, with full knowl-[fol. 13] edge of the existing Articles of Agreement in effect on board the vessel, stood on the dock alongside the SS. *Nassau* and called to the men to stop their work and prepare to strike the vessel. As a consequence of this intended inducement by the representatives of IMWU the ship's stewards refused to work and neglected their duties on board the vessel.

12. Upon information and belief, on May 13, 1960 at approximately 10:30 A. M. longshoremen ceased to load baggage, cargo and provisions on board the SS. *Nassau* because of a picket line set up by IMWU at the entrance to Pier 42, North River, New York City. Persons in the picket line carried signs demanding that plaintiff recognize IMWU as the vessel's bargaining agent.

13. Upon information and belief, on May 13, 1960 at approximately 5:00 P. M. representatives of IMWU, having full knowledge of the contractual relations between plaintiff and the crew members, boarded the SS. *Nassau* without permission and incited, encouraged and urged crew members to quit work and desert the vessel. More than 200 crew members thereupon walked off the vessel, some in the hope of higher wages promised by IMWU and others in fear of reprisal. As a result the SS. *Nassau* was left with approximately 10 seamen on board and without the large number of personnel necessary to service or safeguard approximately 360 passengers who had boarded the vessel which originally was scheduled to depart at 6:00 P. M. on May 13, 1960.

14. Upon information and belief, on May 13, 1960 at approximately 5:15 P. M. Paolo Vagliasindi, the Captain [fol. 14] of the SS. *Nassau*, called together on the dock the deserting crew members who had left the ship and urged them to return to the vessel and resume their duties. At the instigation of IMWU representatives, the crew members refused this request.

15. Upon information and belief, because of the activities of representatives of IMWU, committed by all IMWU

members through their association, the SS. *Nassau* has been kept incapacitated and cut off from services at Pier 42, North River, New York City, since May 13, 1960 at approximately 5:15 P. M. The vessel presently is without the complement of crew members necessary to move the vessel safely from its berth, and because of the picket line cannot obtain necessary towing services from tugboats. The SS. *Nassau* presently is occupying the berth reserved for the MS. *Victoria* which is scheduled to arrive in the Port of New York on May 15, 1960. Unless the SS. *Nassau* is moved from Pier 42, the MS. *Victoria* will not have a berth to discharge passengers and cargoes. The IMWU has demanded that it also be recognized as the bargaining agent for the MS. *Victoria*, and thus has made it clear that this vessel will also be subject to IMWU pressures upon its arrival.

16. The activities of the defendant union and its officers and members constitute an unlawful intentional interference with plaintiff's business and an intentional infliction of temporal damage in that defendant seeks by picketing and otherwise to compel recognition of defendant union notwithstanding that said union does not lawfully represent [fol. 15] a majority of the crew, and the plaintiff is the innocent victim of a jurisdictional dispute between rival unions.

17. The activities of the defendant union and its officers and members constitute an unlawful interference with the plaintiff's business and an intentional infliction of temporal damage in that defendant seeks by picketing and otherwise to coerce plaintiff to recognize defendant union although such union could not be certified as collective bargaining agent by either the National Labor Relations Board or the New York State Labor Relations Board for the reason that neither the state nor the federal labor relations statutes apply to foreign ships with foreign crews in any way.

18. The activities of the defendant union and its officers and members constitute an unlawful intentional interference with the internal management and relations of a foreign vessel and an intentional infliction of temporal dam-

age in that defendant has induced and coerced breaches of the ship's articles, neglect of duty and desertion.

19. The activities of defendant union and its officers and members are for an unlawful purpose in that they constitute an intentional infliction of temporal damage and a breach of the provisions of Treaty of Friendship, commerce and navigation dated August 8, 1938 between the United States and the Republic of Liberia, which provides for freedom of commerce and navigation, the right of Liberian vessels freely to enter United States ports, and the right of Liberian nationals to engage in commercial [fol. 16] activity in the United States without interference.

20. No labor dispute exists between plaintiff and defendants as defined by Section 876-a of the Civil Practice Act.

21. As a consequence of defendants' acts plaintiff has suffered very severe monetary loss.

22. The plaintiff has spent large sums of money in purchasing, converting, repairing and maintaining the SS. *Nassau* and MS. *Victoria*, and in establishing and maintaining an organization to solicit passengers and carry out necessary business functions. In operating these vessels the plaintiff has established valuable good will and reputation, and its business has been well-patronized and profitable. Many passengers have purchased tickets for future cruises on plaintiff's vessels. The activities of IMWU threaten to destroy plaintiff's business and good will, to necessitate a refund of passage monies paid in advance, to bring about the cancellation of future voyages and to subject plaintiff to publicity which is unjust and unwarranted, all to plaintiff's irreparable damage.

23. Defendants' activities directed against plaintiff's vessels will continue unless restrained.

24. Plaintiff has no adequate remedy at law.

25. The granting of a temporary restraining order and a preliminary injunction will not work hardship on defendants because plaintiff's vessels regularly and at short

[fol. 17] intervals come into New York and are always subject to the power of the defendant union to picket the ships and apply other economic pressures, whereas on the other hand plaintiff is being subjected to extremely severe economic loss and the threatened destruction of its good will, reputation, and opportunity to carry on in business at all.

Wherefore, the plaintiff prays that:

1. This court make an order directing the defendants and if and then to show cause at a time and place to be appointed and an order to have causes why they and each of them and their agents and those acting in cooperation with them should not be restrained during the pendency of this action from interfering in any way with the operation and management of the SS. *Nassau* and MS. *Victoria*; from inciting, urging, or encouraging crew members thereof to neglect their duties on board said vessels, or to refuse to return to said vessel; also from maintaining, supporting, directing or otherwise aiding or abetting crew members who have left said vessels and have refused to perform their duties thereon; also from picketing said vessels for any purpose.

2. A temporary restraining order be granted enjoining and restraining the above-named defendants and their agents and those acting in concert with them and each of them until time whereupon the order to include from doing or threatening to do any of the acts and things set forth above in Paragraph 1 in this prayer for relief.

[fol. 18] 3. That upon the hearing of said order to show cause a preliminary injunction be granted restraining said defendants and each of them, and respective members, agents, servants, representatives and employees from doing any of said acts and things set forth above in Paragraph 1 of this prayer for relief.

4. That the said restraining order and said injunction be in force and binding upon all of the defendants above named and upon each and all other persons whomsoever are not named herein where such person has knowledge of said restraining order or when such injunction or restraining

order and the existence and of be made known to any of such persons by personal service upon them or any of them of a copy of such order.

5. That plaintiff be allowed to recover from defendants damages and costs of suit herein incurred and such other and further relief, if any, as may be just and proper.

Gray & Wythe, Horace M. Gray, Attorneys for Plaintiff.
(Verified by Max J. Ramsden Wolfson, Agent for Plaintiff Incres Steamship Company, Ltd., May , 1960.)

[fol. 19]

IN SUPREME COURT OF THE STATE OF NEW YORK

AFFIDAVIT OF MAX J. RAMSDEN WOLFSON, READ IN SUPPORT OF MOTION—May 14, 1960

State of New York,
County of New York, ss.:

Max J. Ramsden Wolfson, being duly sworn, deposes and says:

That he is President of Incres Line Agency, Inc., a New York corporation having offices at 39 Broadway, New York, N. Y., and is familiar with the facts hereinafter set forth in this affidavit submitted in support of a motion for a temporary restraining order and preliminary injunction.

This affidavit is submitted by deponent as an officer of Incres Line Agency, Inc., the General Passenger Agent in North America of the plaintiff, inasmuch as the plaintiff is a Liberian corporation with no office or place of business within the United States, and inasmuch as there is at this time no officer of the plaintiff within the United States. Mr. Vincenzo Berlingeri, the President of the plaintiff Incres Steamship Company, Ltd. (hereinafter called "Incres") will arrive in New York on May 15th, however.

Incres is a corporation duly organized and existing under the laws of the Republic of Liberia, with its principal office in Monrovia, Liberia. The Company is in the business of operating passenger vessels between New York and

Caribbean ports. It is the owner of the Steamship *Nassau* and the Motor Vessel *Victoria*, each of which vessels is lawfully registered under the laws of Liberia and flies the Liberian Flag.

[fol. 20] Upon information and belief the defendant union is an unincorporated association having its principal office and place of business at 263 West 14th Street, New York, N. Y.; the defendants Shannon J. Wall and Edward Pogor are respectively president and a representative of defendant union and as such have dominated, directed and controlled and still dominate, direct and control the affairs and activities of defendant union.

The SS. *Nassau* and the MS. *Victoria* are vessels each with accommodations for in excess of 500 passengers. Both vessels are making regular runs between New York and Caribbean ports. The SS. *Nassau* was due to depart New York for Nassau at 6:00 o'clock May 13th and return May 20th. The MS. *Victoria* is due to arrive in New York on May 15th.

Both vessels are operated by crews substantially all of whom are Italian citizens. The crews were lawfully signed on in Genoa, Italy, in the Fall of 1959 under Liberian Articles of Agreement which are presently in effect and which remain in effect for one year or until the expiration of the cruise season of the vessels, which usually occurs during the month of September.

Upon information and belief, this contract was approved by the Federazione Italiana Lavoratori del Mare which is an Italian union, and at the time of the signing of the Articles and at all times since a large proportion of the crews have been members of that union. The terms of the Articles of Agreement correspond to those of the Italian National Contract and were approved by the Federazione Italiana Lavoratori del Mare.

[fol. 21] Upon information and belief, the crews are regularly covered as to a pension fund with the Cassa Previdenza Marinara and as to sickness benefits with the Cassa Marittima Tirrena.

In the Articles of Agreement under the National Contract all wages, hours, terms and conditions of employment relating to ships' personnel are settled, determined, and

agreed upon so that at the present time no labor dispute or dispute of any nature exists with respect thereto.

On the morning of May 13th the defendant union began maliciously, recklessly and unlawfully interfering with the operation and loading of the SS *Nassau* and has prevented the vessel from leaving her berth at Pier 42, in causing said vessel to be picketed by members of the defendant union and in boarding said vessel and inciting and causing mutiny, desertion, and breach of their Articles by the crew.

Their activities furthermore gravely endangered and endanger the safety of the 357 passengers on board the ship and resulted in the ship being stripped of the majority of its crew except for a skeleton watch. It resulted in there being no stewards on board to provide dinner for the passengers, to direct them about the ship, or to otherwise look out for and safeguard them. These obstructive and malicious activities have been continued with the result that the ship is unable to obtain services of any sort because union labor has refused to cross the picket lines. Furthermore, many of the passengers have at this time canceled their reservations and Incres has been obliged to refund [fol. 22] in excess of $80,000 fares. Other damages increase with each hour that the ship is tied up.

The reputation and good will of the SS *Nassau* and the Incres have been and are being irreparably harmed. This reputation and good will constitute invaluable assets in the cruise business in which the Company is engaged.

The picketing and other activity was commenced utterly without warning, although plaintiff allowed representatives on board to converse with the crew and at all times indicated its willingness to meet with and did meet with defendant union and its representatives. Defendants have been and are carrying placards bearing the legend in effect: "SS *Nassau* unfair; will not recognize International Maritime Workers Union" and similar language.

An offer was delivered by defendant union to the SS *Nassau* in the evening of May 13th stating that defendant union would withdraw its picket line if Incres agreed to meet with it on May 16th for the purpose of collective bargaining. Mr. Berlingeri was contacted by radio and au-

thorized agreement to this offer provided negotiations would not be in conflict with the decisions which are to be taken at the next meeting in London of International Trade Federation, a federation of unions of many nations, regarding jurisdiction over the personnel of the two vessels above named. This offer was rejected by the union, although it was eminently fair in view of the international jurisdictional questions involved between the rival American and Italian unions and the impossibility of determining which union if any should rightfully represent the crews [fol. 23] of the SS *Nassau* and the MS *Victoria*.

The activities of the union lead to the inescapable conclusion that the MS *Victoria* will be picketed upon her arrival on May 15th in that the defendant union has demanded recognition as the bargaining agent of that vessel as well as the *Nassau*. The ship is due to dock at Pier 42, which is currently blocked by the presence of the SS *Nassau*. The SS *Nassau* cannot be moved, due to the picket lines, and it is believed that the MS *Victoria* will be unable to dock at another pier due to the understandable reluctance of pier owners to let ships which are certain to be picketed tie up at their piers. It is not known how or if passengers on the MS *Victoria* will be able to be disembarked.

Wherefore, deponent prays that this Court will issue a temporary restraining order and a preliminary injunction against defendants and those cooperating with them, commanding them to remove all pickets immediately and to refrain and desist from picketing the MS *Victoria* on her arrival in New York and to cease obstructing or coercing Incres, and for such other relief as may be just. No previous application for the relief requested herein has been made.

Max Ramsden Wolfson.

(Sworn to before Cord W. Eriksen, May 14, 1960.)

[fol. 24]

IN SUPREME COURT OF THE STATE OF NEW YORK

AFFIDAVIT OF PAOLO VAGLIASINDI, READ IN SUPPORT OF MOTION—May 14, 1960

State of New York,
County of New York, ss.:

Paolo Vagliasindi, being duly sworn, deposes and says:

That I am an Italian citizen and Captain of the SS *Nassau*, a passenger cruise vessel registered under the laws of the Republic of Liberia and flying the Liberian Flag.

The SS. *Nassau* is owned by Incres Steamship Company, Ltd. (hereinafter called "Incres"), a corporation organized and existing under the laws of Liberia.

Substantially all of the crew of the SS. *Nassau* are Italian citizens. The crew entered into Liberian Articles of Agreement in Genoa on or about November 27, 1959. These Articles remain in effect for one year or till the end of the ship's cruise season which ordinarily is in the fall.

The SS. *Nassau* is engaged in weekly cruises between New York, N. Y. and Nassau, B. W. I. The ship reached New York on the morning of May 13 and tied up at Pier 42, North River.

On information and belief union men were on the dock when the ship arrived. Early in the morning one of the officers was told that a whispered call from the dock was directed toward the ship and urging the crew not to perform any work as the ship would not sail because it would be picketed. The first sign of a disobeyal of orders occurred in the morning when some of the ship's stewards refused to perform their duties. This was to spread during the [fol. 25] day until the ship became totally incapacitated and cut off from services.

At approximately 10:30 A. M. longshoremen ceased loading provisions and other items onto the ship after having loaded about two out of seventy tons. On information and belief this work stoppage was caused by the placing of a

picket fine by the defendant union at the entrance of the Pier.

The crew of the ship was therefore ordered to embark the goods which were left lying on the pier in the open. About 6 stewards disobeyed orders and refused to embark the provisions and other items, but the remainder of the crew did complete the loading, although numerous members of the union were visible in the dock area.

After twelve a large number of the crew went ashore on leave until four o'clock at which time all members returned and started to work in the usual way. On information and belief these crew men were incited, induced and improperly persuaded while on shore to disobey orders and cease performing their work at five o'clock by the defendants. At or about five o'clock all of the crew except for the watch and about fifty men ceased working and abandoned the ship.

I then went ashore as Captain and urged the men to come back on board and resume their duties, but the crew refused. Union representatives and members were waiting at the end of the dock. At about 2:30 P. M. members of the ship's crew engaged in painting areas of the ship and had been subjected to threats of violation and intimidation, and in view of the explosive atmosphere which prevailed [fol. 26] at that time and to avoid violence and disturbance I ordered those men to cease painting.

Shortly after five o'clock union representatives boarded the ship and induced by various means, including coercion and threats, most of the fifty or so crew members remaining on board to abandon the ship.

The ship thereafter remained crewless except for a watch. The last of the 357 passengers had boarded, but there were no stewards to prepare dinner for them or provide other vital services. The ship was left and is left without the necessary personnel on board to insure her safety or the safety of the passengers had an emergency arisen or should one arise. Only a small watch and the officers and certain supervisory personnel have remained on board, effectively subject to orders.

The MS. *Victoria* is due to arrive at Pier 42 on May 15th but there is no room for her because the SS. *Nassau* can-

not be moved as a result of the picket lines and the lack of an effective crew.

Capt. Vagliasindi.

(Sworn to before Cord W. Eriksen, May 14, 1960.)

[fol. 27]

IN SUPREME COURT OF THE STATE OF NEW YORK

NOTICE OF CROSS MOTION—May 17, 1960

Sirs:

Please Take Notice that annexed hereto is the affidavit of Shannon J. Wall, sworn to the 17th day of May, 1960, in opposition to plaintiff's motion for a temporary injunction.

Please Take Further Notice that at the time of the hearing of plaintiff's said motion defendants will make a cross motion

(1) Upon the complaint pursuant to Rule 106(1), and

(2) Upon the complaint and the said annexed affidavit of Shannon J. Wall pursuant to Rule 107(1).

for an Order dismissing the complaint upon the ground that the Court has not jurisdiction of the subject of the action and for such other further and different relief as to the Court may seem just and proper.

Dated: New York, New York, May 17, 1960.

Yours, etc.

Cooper, Ostrin & De Varco, Attorneys for Defendants.

To: Gray & Wythe, Esqs., 42 Broadway, New York, New York.

[fol. 28]

IN SUPREME COURT OF THE STATE OF NEW YORK

AFFIDAVIT OF SHANNON J. WALL, READ IN SUPPORT OF CROSS MOTION AND IN OPPOSITION TO MOTION

State of New York,
County of New York, ss.:

Shannon J. Wall, being duly sworn, makes the following statement:

I am the Executive Director of International Maritime Workers Union (IMWU) which maintains its offices at 265 West 14th Street, New York 11, New York, and I am fully familiar with all of the facts hereinafter set forth.

I submit this affidavit in opposition to plaintiff's motion for a temporary injunction and in support of defendants' cross-motion under Rule 107 to dismiss the complaint on the ground that the Court lacks jurisdiction of the subject of the action in that the labor dispute here presented has been preempted by Congress in the National Labor Relations Act.

With regard to serious jurisdictional questions which have been raised, the Court should be informed that IMWU has filed unfair labor practice charges against plaintiff with the National Labor Relations Board. A copy of the formal charges is annexed hereto as Exhibit "A".

This case arises out of a labor dispute between plaintiff Incres Steamship Co. and the crews of the Company's two vessels SS. *Nassau* and M/V. *Victoria*. A majority of these crew members have chosen IMWU as their collective bargaining representative and want recognition for the Union. Specific grievances of the crews that had led to this dis-
[fol. 29] pute include low pay, inferior working conditions, a bonus system of overtime, kickbacks and lack of job security resulting from no union representation.

Thus the Court has before it a typical labor dispute between an employer and his employees. The peaceful picketing engaged in by IMWU in support of the employees' demands has traditionally been held lawful by state and federal courts.

The IMWU was formed for the purpose of organizing merchant seamen employed aboard vessels whose flags are foreign to the United States but which are ultimately owned or controlled by United States or related interests having no substantial connection with the flag of registry. Shipowners, hopeful of evading corporation income taxes, union labor standards and strict safety and maintenance requirements, commonly register their vessels under the flags of Panama, Liberia or Honduras.

To meet the threat of "Panlibhon" registry, trade unions of some sixty-two nations in the free world have, through their parent association, International Transportation Workers Federation (ITF), worked out an agreement among themselves that jurisdiction to organize the crew of a particular vessel shall lie with the union in the country where the actual control of the vessel is maintained, regardless of the flag the vessel may fly. The jurisdiction of IMWU to organize the crews of plaintiff's vessels has been expressly confirmed by ITF (Exhibit "B").

Plaintiff appears most intent in its moving papers to convince the Court that it is a "Liberian corporation with [fol. 30] no office or place of business within the United States. . . ." The fact is that the registration of plaintiff's vessels under Liberian Flag is a purely technical device. Neither the *Nassau* nor the *Victoria* have ever touched a Liberian port, nor is plaintiff controlled in any manner by Liberian interests. On the contrary, plaintiff is engaged in an American shipping enterprise, operating exclusively out of the Port of New York and managed and controlled from New York City.

Plaintiff is engaged in the Caribbean cruise business. The *Nassau* and *Victoria* sail regularly from New York to Caribbean ports and this is the extent of their commercial operations, or at least the moving papers disclose no other. Plaintiff's passengers are almost exclusively American tourists. How plaintiff is able to conduct its large cruise business without an "office or place of business within the United States" is easily discernible from its moving papers. It does so through a second corporation, Ineres Line Agency, Inc., whose President, Max J. Wolfson, has filed

the main affidavit in support of plaintiff's application for a temporary injunction.

Ineres Line Agency, which is admittedly a New York corporation with offices at 39 Broadway, represents itself to be plaintiff's "General Passenger Agent in North America." The nature of the interlocking interests between the so-called Liberian corporation, Ineres Steamship Company, Ltd., and the New York corporation, Ineres Line Agency, Inc., may be left to inference.

Clearly, however, someone in New York is selling tickets for plaintiff's cruises and seeing to it that the *Victoria* and [fol. 31] *Nassau* are supplied and maintained. Parenthetically, it might be observed that Captain Paolo Vagliasindi, Master of the *Nassau*, asserts in his affidavit that because of defendants' picketing plaintiff has been unable to load in New York City nearly seventy tons of provisions aboard the *Nassau*.

Plainly, therefore, plaintiff notwithstanding its Liberian registry is engaged in United States shipping operations conducting Caribbean cruises for American citizens. Plaintiff's connection with Liberia is fictional—a corporate smoke screen through which plaintiff hopes to escape exposure to United States labor laws and the organizational activities of legitimate maritime unions.

Plaintiff's anti-union motivations are doomed to frustration. For, as we show in our memorandum of law, The National Labor Relations Board and the Supreme Court of the United States have both upheld the legitimacy of organizational activities by American maritime unions against Panlibhon ship operations such as plaintiff. Against the factual backdrop of this case there can be no question that IMWU has a very serious labor dispute with the plaintiff and IMWU's activities in support of its postion in the dispute are lawful.

IMWU began to organize the crews of the *Nassau* and *Victoria* in February of this year. Within two months it had succeeded in obtaining pledge cards from a majority of the unlicensed crew members designating IMWU as the union of their choice.

On April 13 I met with Mr. Berlingeri, President of the plaintiff, at his office at 39 Broadway, New York City,

[fol. 32] and informed him that the IMWU represented a majority of the seamen on his vessels. I also told him that I was desirous of negotiating a collective bargaining agreement on behalf of these seamen.

Without challenging the IMWU's majority status Mr. Berlingeri stated that he knew that representatives of the IMWU had been active among the crews and that he had no objections to IMWU's processing grievances on behalf of the crews. He requested only that IMWU representatives when boarding the vessels first announce themselves to the Masters.

While Mr. Berlingeri recognized IMWU for the purpose of processing grievances, he expressed himself as reluctant to enter into formal contractual relations with IMWU because he was apprehensive of the demands for wages and improved working conditions that would be made. He stated to me that he preferred to deal with an Italian union and that he would be willing to negotiate an agreement with some such organization which the IMWU could administer. I flatly rejected this strange proposal. However, the fact that it was made by Mr. Berlingeri was unwitting acknowledgment on his part that only an American union could effectively represent the crews of the Company's vessels. For, plainly, from the standpoint of their employment, New York City is the home port of the crews.

It might further be pointed out that while plaintiff's papers contain teasing hints (without clear-cut claims being made) that the crews of the *Nassau* and *Victoria* are repre- [fol. 33] sented by an Italian union, this is not the fact. IMWU is the only union designated by the crews to represent them, and no other union bargains on their behalf. The crews are simply without union representation of any kind at the present, and it is their desire for such representation that has touched off the present dispute.

On May 4, 1960, I again met with Mr. Berlingeri at his office at 39 Broadway to further urge recognition for IMWU. Once more Mr. Berlingeri, without challenging the majority status of IMWU, unequivocally stated that he preferred to deal with an absentee Italian union. The meeting adjourned with a clear understanding that Mr. Ber-

lingeri would contact me further on the matter no later than May 10.

When nothing was heard from Mr. Berlingeri on May 10, it became apparent that plaintiff had no intention of voluntarily recognizing IMWU. Within a day or two thereafter the decision was made to publicize the dispute between IMWU and plaintiff by means of picketing.

A peaceful and orderly picket line was thereafter established at a public location adjacent to Pier 42. As long as it continued the picketing was peaceful and orderly and unmarked by disturbance of any kind. The legends on the picket signs were truthful and there is no contention in the moving papers to the contrary. The signs read as follows:

> "We want better wages and working conditions for M/V. *Victoria* [SS. *Nassau*] seamen. This picketing [fol. 34] is only against the M/V. *Victoria* [SS. *Nassau*]. We have no dispute with any other employer."
>
> "M/V. *Victoria* [SS. *Nassau*] unfair. Refuses to recognize International Maritime Workers Union. This picketing is only against the M/V. *Victoria* [SS. *Nassau*]. We have no dispute with any other employer."

I categorically deny that IMWU, or any of its representatives, at any time threatened or coerced any one, least of all crew members. In point of fact, crew members of the *Nassau* voluntarily and in spontaneous protest left the vessel.

On May 16 IMWU's unfair labor practice charges against the Company which had been prepared three days earlier were filed with the National Labor Relations Board. The charges accuse the Company of violating the Taft-Hartley Act by reason of its refusal to recognize and bargain with IMWU. Filing of the charges was delayed until Monday of this week because there appeared to be a clear indication from Mr. Berlingeri, then at sea aboard the M/V. *Victoria*, that he was prepared to extend recognition and bargain in good faith with the IMWU. In this connection I annex to this affidavit as Exhibit "C" a copy of a radiogram which I addressed to Mr. Berlingeri on Friday,

May 13, following lengthy discussions with a Mr. Stevenson of the law firm of Gray & Wythe, attorneys for the plaintiff, and telephone conversations with Mr. Wolfson, President of Ineres Line Agency, Inc. The radiogram conveyed IMWU's assurances to Mr. Berlingeri that it was [fol. 35] prepared to withdraw the picket line if he would consent to recognize and bargain with IMWU. Mr. Berlingeri replied later that night that the proposal was acceptable, provided the conditions outlined in my radiogram were "not in conflict with the determination which will be taken at the next meeting of ITF in London regarding jurisdiction over the personnel of the SS. *Nassau* and M/V. *Victoria*."

Having imposed a condition not contemplated in my discussions with Mr. Stevenson and Mr. Wolfson, I rejected Mr. Berlingeri's counter-proposal and continued to picket.

Notwithstanding, on Monday, May 16, IMWU requested and received the cablegram from Omar Becu, President of ITF, (Exhibit B) which confirmed that the *Nassau* and *Victoria* were within IMWU's organizational jurisdiction. This clearance from ITF which had been imposed as a condition to recognition by Mr. Berlingeri on May 13, was brought to the attention of Company representatives, but the Company has nevertheless persisted in its refusal to negotiate with the IMWU.

That the Company is engaged in a deliberate campaign to defeat IMWU's organizational efforts and force its employees, regardless of their desires, to accept union representation agreeable to the Company, is conclusively established by the letter (annexed hereto as Exhibit "D") which Mr. Berlingeri circulated among the crew members today. By means of this letter Mr. Berlingeri seeks unlawfully to circumvent IMWU and deal directly with the crews. To entice the crews to abandon IMWU he holds out to them the promise that the Company, effective January 1, 1960, [fol. 36] will put into effect the conditions contained in a collective bargaining agreement negotiated by an Italian labor union. The very making of the promise belies any claim that the crews are presently represented by an Italian labor union.

The letterhead under which Mr. Berlingeri circulated his proposal to the seamen contradicts the contention of Mr. Wolfson that the plaintiff, Incres Steamship Company, Ltd., has no office in New York and is eloquent of the closeness of the corporate relationship between the plaintiff and Incres Line Agency, Inc. The letterhead reads as follows:

"INCRES LINE
Incres Steamship Co. Ltd.
INCRES LINE AGENCY INC.
General Agents
39 Broadway, New York 6, N. Y."

A full review of the facts conclusively demonstrates that plaintiff and defendants are engaged in a domestic labor dispute. Plaintiff's paper corporate manipulations by which it seeks to achieve the appearance of a Liberian nationality should be tagged for the fictions that they are. Plaintiff should not be permitted to insulate itself from the legitimate demands of its employees for IMWU representation on the pretext that it has no office in the United States. Plaintiff does business nowhere else but in the United States. Plaintiff should particularly be denied the unique and extraordinary immunity it seeks in view of the sketchy set of moving papers it relies on, which are based largely [fol. 37] on hearsay and conclusory allegations.

For all of the foregoing reasons and for the additional reasons contained in defendants' memorandum of law, I respectfully pray that plaintiff's motion for a preliminary injunction be in all respects denied and the temporary restraining order vacated, and that defendants' cross-motion to dismiss the complaint be granted.

Shannon J. Wall.

(Sworn to May 17, 1960.)

[fol. 38]

EXHIBIT A, ANNEXED TO AFFIDAVIT OF SHANNON J. WALL, READ IN SUPPORT OF CROSS MOTION AND IN OPPOSITION TO MOTION

Charge Against Employer.

(See opposite) ☞

Form NLRB-501
(9-53)

Form approved
Budget Bureau No. 64-R001.6

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

DO NOT WRITE IN THIS SPACE

Case No.

Date Filed

Compliance Status Checked By

INSTRUCTIONS: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

NAME OF EMPLOYER: Ineres Steamship Company Ltd, Also known as Ineres Line

NUMBER OF WORKERS EMPLOYED: 490

ADDRESS OF ESTABLISHMENT (Street and number, city, zone, and State):

39 Broadway, Room 1908
New York, New York

TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.): Steamship Company

Identify principal product or service: Shipping

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (5) (list subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The Employer since on or about April 13, 1960 has violated Section 8 (a) (5) of the Act by refusing to recognize and bargain in good faith with the Union, the duly designated collective bargaining representative of the unlicensed personnel (non-supervisory) employed aboard its vessels, S.S. NASSAU and M/V VICTORIA.

By the foregoing and by other acts and conduct the Employer has interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

By the foregoing and by other acts and conduct the Employer has interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)
International Maritime Workers Union

4. Address (Street and number, city, zone, and State) | Telephone No.
265 West 14th Street, New York 11, New York | ORegon 5-9000

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filed in when charge is filed by a labor organization)
same

6. Address of National or International, If any (Street, and number, city, zone, and State) | Telephone No.
same | same

7. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

INTERNATIONAL MARITIME WORKERS UNION

By [redacted] (Representative or person filing charge)

May 13, 1960 — Executive Director
(Date) — (Title, if any)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 80)

U. S. GOVERNMENT PRINTING OFFICE 16-57900-6

[fol. 40]

EXHIBIT B, ANNEXED TO AFFIDAVIT OF SHANNON J. WALL, READ IN SUPPORT OF CROSS MOTION AND IN OPPOSITION TO MOTION

Telegram.

(Form of RCA COMMUNICATION, INC.)

BR75 NY391 OPH2678
LONDON 19 16 1712
ENEMU NEW YORK

CONFIRM THAT UNION JURISDICTION FOR VESSELS NASSAU AND VICTORIA SHOULD BE WITH UNITED STATES MARITIME UNION
INTRANSFE

[fol. 41]

EXHIBIT C, ANNEXED TO AFFIDAVIT OF SHANNON J. WALL, READ IN SUPPORT OF CROSS MOTION AND IN OPPOSITION TO MOTION

Radiogram

Mr. V. Berlingeri
M/V *Victoria*
At Sea—Caribbean

I. M. W. U. will accept Berlingeri's assurance that promptly on arrival at New York of *Victoria* he will begin negotiations in good faith with I. M. W. U. for collective bargaining agreement on behalf of unlicensed non-supervisory personnel employed on *Nassau* and *Victoria*. Foregoing being subject to any valid collective bargaining contract between Italian Union and Incres, if one exists. Incres guarantees no recriminatory action against crew. Mr. Wolfson on behalf of Incres to be authorized to confirm such assurances to I. M. W. U.

Upon compliance by you with foregoing through your designated Agent Wolfson the picket line will be withdrawn and crew will sail SS. *Nassau*.

s/ SHANNON WALL

EXHIBIT D, ANNEXED TO AFFIDAVIT OF SHANNON J. WALL, READ IN SUPPORT OF CROSS MOTION AND IN OPPOSITION TO MOTION

Letter Ineres Line Circulated Among the Crew Members

(Omitted, same as defendants' Exhibit A-1, printed at pp. 240-242, *infra*.)

[fol. 42]

IN SUPREME COURT OF THE STATE OF NEW YORK

AMENDED ANSWER

The defendants, International Maritime Workers Union (IMWU) and Shannon J. Wall, by their attorneys, Cooper, Ostrin & DeVarco and Miller & Seeger, for their answer to the complaint, allege as follows:

1. Deny each and every allegation contained in paragraphs "10", "14", "17", "18", "19", "20", "21", "23", "24" and "25".

2. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs "4", "6" and "9".

3. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "1", except deny that plaintiff "has its principal office in Monrovia, Liberia".

4. Deny each and every allegation contained in paragraph "3", except admit that defendant Shannon J. Wall is "a resident of the State of New Jersey".

5. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "7", except admit that on or about May 13, 1960, the SS. *Nassau* entered the Port of New York and docked at Pier 42, North River, New York City, where it presently remains.

[fol. 43] 6. Deny each and every allegation contained in paragraph "11", except admit that on May 13, 1960, the crew members of the SS. *Nassau* voluntarily engaged in a strike in response to a request by IMWU.

7. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragaph "12", except admit that "persons in the picket lines carried signs demanding that plaintiff recognize IMWU as the vessel's bargaining agent".

8. Deny each and every allegation contained in paragraph "13", except admit that on May 13, 1960, IMWU representatives requested crew members of the SS. *Nassau* to engage in a strike, and that the vast majority of crew members voluntarily responded to the request.

9. Deny each and every allegation contained in paragraph "15", except admit that IMWU has demanded recognition as bargaining agent for the unlicensed crew members of the MS. *Victoria*.

10. Deny each and every allegation contained in paragraph "16", except admit that IMWU seeks by picketing to obtain recognition as the bargaining representative for unlicensed crew members.

11. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "22", except deny that any of the activities of IMWU are "unjust and unwarranted, all to plaintiff's irreparable damage".

[fol. 44] *First Complete Affirmative Defense*

12. IMWU is an American maritime "labor organization" engaged in "commerce" and in an industry "affecting commerce" as the quoted terms are defined in the Labor

Management Relations Act of 1947 (LMRA) (29 U. S. C. A. §§141, 152), and the concerted activities of IMWU are subject to regulation under the LMRA.

13. IMWU admits to membership all seamen regardless of race, color, creed or nationality.

14. IMWU was formed in 1959 for a twofold purpose:

(a) To organize and represent all seamen employed aboard vessels whose flags are foreign to the United States of America and whose ultimate ownership or control has no substantial connection with the country of registry, in order to insure to those seamen just and fair treatment, and to improve and protect their wages, their hours of labor and their working conditions.

(b) By so organizing and representing such seamen and improving their job conditions, which are substandard, IMWU aims at alleviating the detrimental effects those conditions have on the superior job standards and the job opportunities of American seamen employed aboard American flag vessels under collective bargaining agreements negotiated by the National Maritime Union of America, AFL-CIO (NMU), and the Seafarers International Union of North America, AFL-CIO (SIU).

[fol. 45] 15. NMU and SIU are American maritime "labor organizations" engaged in "commerce" and in an industry "affecting commerce" as the quoted terms are defined in the LMRA.

16. NMU and SIU together represent the overwhelming majority of organized American seamen employed aboard American flag vessels, and both organizations have supported the formation of IMWU.

17. As a result of collective bargaining, the wages, hours, fringe benefits, job security and other working conditions enjoyed by the unlicensed seamen represented by NMU and SIU are the finest in the world.

18. The plaintiff is an "employer" engaged in "commerce" and in an industry "affecting commerce", as the quoted terms are defined in the LMRA.

19. Plaintiff owns and operates two passenger cruise vessels which regularly sail between New York City and Caribbean ports. Plaintiff's cruises begin and terminate in New York, and plaintiff's passengers are almost exclusively American citizens.

20. In the operation of its two cruise vessels plaintiff employs approximately five hundred unlicensed seamen.

21. In or about February, 1960, IMWU commenced to organize the unlicensed crew members of the *Nassau* and [fol. 46] *Victoria*. By April, 1960, IMWU had succeeded in obtaining signed pledge cards from a majority of said crew members who indicated by the signing of the cards that they desired to become members of IMWU and to be represented by IMWU for the purposes of collective bargaining.

22. On or about April 13, 1960, IMWU demanded recognition from plaintiff as the bargaining representative for the unlicensed crew members of the *Nassau* and *Victoria*, and representatives of IMWU met on that day and a number of times thereafter with representatives of plaintiff for the purpose of discussion and negotiation with respect to recognition and also with respect to certain pressing grievances for which the crew members of the *Nassau* and *Victoria* were demanding prompt redress.

23. Several minor grievances were resolved in the course of such meetings, but plaintiff, resorting to various dilatory tactics, repeatedly sought to avoid formal recognition of IMWU as the bargaining representative for the unlicensed crew members of the *Nassau* and *Victoria* or negotiations with IMWU on major economic issues, although plaintiff did not once question IMWU's majority status.

24. On May 13, 1960, IMWU commenced picketing plaintiff's vessels at their regular pier in New York City, and the picketing was supported by a strike of the overwhelming majority of the crew members of both vessels.

25. The picketing was at all times peaceful and orderly and the number of pickets at any one time was limited to [fol. 47] three. The legends on the picket signs carried by

the pickets were truthful and non-deceptive and read as follows:

> "We want better wages and working conditions for SS *Nassau* [M/V *Victoria*] seamen. This picketing is only against the SS *Nassau* [M/V *Victoria*]. We have no dispute with any other employer."
>
> "SS *Nassau* [M/V *Victoria*] unfair. Refuses to recognize International Maritime Workers Union. This picketing is only against the SS *Nassau* [M/V *Victoria*]. We have no dispute with any other employer."

26. The object of the picketing was to require plaintiff to recognize IMWU as the majority representative of plaintiff's unlicensed crew members, and to protest the substandard wages and working conditions under which said crew members were employed by plaintiff.

27. On May 16, 1960, IMWU filed unfair labor practice charges against plaintiff with the National Labor Relations Board alleging that plaintiff had violated Sections 8(a)(1) and (5) of the LMRA by its refusal to bargain collectively with IMWU as the designated majority representative of the crews.

28. Plaintiff's shipping operations are competitive with the shipping operations of ship operators under collective bargaining agreements with NMU and/or SIU. Because the terms and conditions of employment of its unlicensed crew members are inferior and substandard, plaintiff's [fol. 48] labor costs are substantially lower than the labor costs of the competing ship operators who are parties to collective agreements with NMU and/or SIU.

29. This differential in labor costs operates to the competitive advantage of plaintiff, and the competitive disadvantage of the ship operators who are bound by collective agreements with NMU and SIU.

30. Numerous detrimental economic consequences are experienced by NMU and SIU and the unlicensed seamen they represent as the result of this inequality in labor costs between plaintiff and competing operators under contract with NMU and/or SIU.

31. By reason of the foregoing, this Court lacks jurisdiction of the subject of the action and exclusive jurisdiction lies with the National Labor Relations Board.

Second Complete Affirmative Defense

32. Repeat and reallege each and every allegation contained in paragraphs "12" to "31" above.

33. By reason of the foregoing, defendant's conduct complained of in the complaint was a lawful exercise of rights afforded by the Labor Management Relations Act, 1947.

Third Complete Affirmative Defense

34. Repeat and reallege each and every allegation contained in paragraphs "12" to "31" above.

[fol. 49] 35. By reason of the foregoing, defendant's conduct was a lawful exercise of rights afforded by the Constitution of the United States.

Fourth Complete Affirmative Defense

36. Repeat and reallege each and every allegation contained in paragraphs "12" to "31" above.

37. The existing controversy between plaintiff and defendants constitutes a labor dispute under Section 876-a of the Civil Practice Act of New York, and the allegations of the complaint fail to comply with said Section.

38. By reason of the foregoing, the complaint on its face fails to state a cause of action.

Fifth Complete Affirmative Defense

39. Repeat and reallege each and every allegation contained in paragraphs "12" to "31" above.

40. By reason of the foregoing, defendants' conduct constitutes a lawful exercise of rights afforded by the Constitution and common law of the State of New York.

Wherefore, defendants IMWU and Shannon J. Wall demand judgment dismissing the complaint, together with the

costs and disbursements of this action, and such other and further relief as to the Court may seem just and proper.

Cooper, Ostrin & DeVarco, Miller & Seeger, Attorneys for Defendants, IMWU and Shannon J. Wall.

[fol. 50]

IN SUPREME COURT OF THE STATE OF NEW YORK

Transcript of Testimony—May 18, 1960

County Court House, Room 130
60 Centre Street
New York, New York.

Before: Hon. Henry Clay Greenberg, Justice.

APPEARANCES:

Donovan, Leisure, Newton & Irvine, Esqs., Attorneys for plaintiff, by Breck P. McAllister, Esq. and Walter L. Stratton, Esq., of counsel.

Cooper, Ostrin & De Varco, Esqs., Attorneys for defendants International Maritime Workers Union and Shannon J. Wall, by H. Howard Ostrin, Esq., of counsel, and Miller & Seeger, Esqs., by Harold L. Young, Esq., of counsel.

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[fol. 66] Afternoon Session

Mr. McAllister: * * *

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[fol. 69] I should like to mention very briefly the Labor Board cases, because I think as a result of the decision in the *Benz* case the Labor Board will quickly dismiss the petition which has been filed here only yesterday or the day before, as I understand it, as soon as the facts are made plain to the Board, which, of course, they were not in this particular petition which has just been filed. This

petition is no more than writing a letter to the District Attorney, you might say.

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[fol. 70] The head office of the company, of the Steamship Line, as we will show, is in London; • • •

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[fol. 87] The Court: I don't think that there will be very much left of the main motion if ultimately I should come to the conclusion that this Court has jurisdiction. I think you will agree with me on that.

Mr. Ostrin: I am sorry. I would like to clear the record. Your Honor stated there won't be anything left to the main motion if you decide that there was jurisdiction?

The Court: Not very much left.

Mr. Ostrin: I respectfully disagree. I think we have a very meritorious case on the merits of the case. I am not prepared to concede.

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ALBERT J. RUDICK, residing at 2 Ridge Crest North, Scarsdale, New York, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. McAllister:

Q. Are you an American citizen?

A. Yes, I am.

[fol. 88] Q. What office do you presently hold?

A. I am Deputy Commissioner of Maritime Affairs for the Republic of Liberia.

Q. How long have you held that office?

A. Since May of 1955.

Q. And where is your business office located?

Mr. Ostrin: In the interest of expediting the hearing I will concede this vessel is not registered here, if that is what he wants.

The Court: Let us get the record clear.

A. My office is at 103 Park Avenue, New York.

The Court: Do you hold that office pursuant to an order of the Liberian Government?

The Witness: Yes. I was appointed by the President of the Republic of Liberia.

Q. And to whom do you report?

A. I report to Albert Maraquay, the Commissioner of Maritime Affairs in Monrovia, Liberia.

Q. Will you explain very briefly your functions and duties as Deputy Commissioner?

A. As Deputy Commissioner my functions deal with the registration of vessels under the Liberian flag, the issuance of ship radio station licenses and officers' licenses in connection with these ships, the recording of mortgages, the keeping of records in connection with Liberian flag ships.

Q. Are the two vessels we are here concerned with, the SS. *Nassau* and the *SS. Victoria* registered under the Republic of Liberia?

A. Yes, both vessels are.

Q. And how do you know that?

A. Because I am personally in charge of the records. I [fol. 89] have signed, with respect to the *Victoria*, all the documents in connection with that vessel. As to the other, as to the *Nassau*, all of them except the certificate of registry which was issued before I took office.

Mr. McAllister: I ask that this paper be marked for identification.

(Plaintiff's Exhibit 1 marked for Identification.)

Q. Will you explain what that is, please (handing Plaintiff's Exhibit 1 for identification)?

A. This is a certificate of permanent registration number 2-55 for the SS. *Nassau*, showing she has a Liberian flag official number 5-27.

Q. Does it show the ownership?

A. Yes, it shows the ownership of this vessel: Ineres Steamship, Ltd., Liberian Citizen, a Liberian corporation.

Mr. McAllister: I offer this in evidence, your Honor.

(Certificate previously marked Plaintiff's Exhibit 1 for Identification marked in evidence.)

Mr. McAllister: We would ask leave to substitute a photostat, since that is one of the original records of the Commissioner's office.

Mr. Ostrin: No objection.

(Photostat received in evidence and marked Plaintiff's Exhibit 1-A.)

The Court: The plaintiff is a Liberian corporation?

[fol. 90] The Witness: Yes, sir.

The Court: Does it show who the officers and directors are?

The Witness: No.

The Court: Do you know?

The Witness: No, sir.

Mr. McAllister: We have the officers in court.

Q. Does this certificate show where the vessel was built?

A. Yes, it does. It shows that she was built in New Castle on the Tynes in England in 1922.

Q. What was the previous registry of the *Nassau*, do you know?

A. Yes. The immediate previous registry of the *Nassau* was Panamanian flag.

Q. Do you have records showing this?

A. Yes, I do. Before any vessel is accepted for registry under the Liberian flag we investigate and make sure that, number one, the ship itself is acceptable and to see where she is coming from and if she comes from another registry we require that she be stricken from the other registry. That is one of the documents we require.

Q. Do you have any records showing any other registry than that which you have just testified to?

A. Well, yes. As I said, when we have a vessel coming in for registration we investigate as to the vessel itself, where she was built, when she was built, under what registry it had previously been, and our investigation shows this vessel was built in 1922, was registered under the British flag under the name "*Mongolia*". Then in 1938, I believe it is, her name was changed to "*Rimutaka*," and she was also then under the

[fol. 91] British flag. In 1950, she was sold and placed under Panamanian flag under the name "*Europa.*" All these names appear on the certificate of registry because we have a notation calling for the former names.

The "*Europa*" was registered under the Panamanian flag and then in 1950 or 1951, I believe, her name was changed to "*Nassau,*" was still under Panamanian flag, and in 1954, under the name "*Nassau*" she was registered under the Liberian flag after she was stricken from the Panamanian flag.

Q. Is the vessel still registered under the Liberian flag?

A. Yes, she is.

Mr. McAllister: Will you please mark this for identification.

(Plaintiff's Exhibit 2 marked for Identification.)

Q. Will you please state what that document is (handing witness Plaintiff's Exhibit 2 for Identification)?

A. This is Liberian permanent certificate of registry number 65-60, the Liberian flag. The vessel: The *Victoria.*

Q. That is the document marked Exhibit 2 for Identification?

A. Yes.

Q. Does this certificate show the present ownership and nationality of the owners?

A. Yes. It shows that the owner is the Incres Steamship Company, Ltd. Citizenship is Liberian.

Mr. McAllister: I offer it in evidence.

Mr. Ostrin: No objection.

(Plaintiff's Exhibit 2 for Identification now marked in evidence.)

[fol. 92] Mr. McAllister: May I ask that a photostat of this document be substituted for the original and marked as Plaintiff's Exhibit 2-A.

(Plaintiff's Exhibit 2-A marked in evidence.)

Q. Mr. Rudick, has the ownership nationality of this vessel remained unchanged since that certificate of registry was issued by you or your office?

A. Yes, it has, it is unchanged.

Q. Does this certificate, like the earlier one, show when and where the vessel "*Victaria*" was built?

A. Yes. This vessel was built in 1937 at Belfast, North Ireland.

Q. And does it show the former registry and ownership of the vessel?

A. It shows the former name, which was the "*Dunnoctar Castle.*" She was formerly under British registry; I believe owned by the Union Castle Line. I have in my files a cancellation of the British registry because she was sold to Incres Steamship Company, Ltd. for registration under the Liberian flag.

Q. Can you state whether or not this vessel is still validly registered under the Liberian flag?

A. She is.

Mr. McAllister: Your witness.

Cross examination.

By Mr. Ostrin:

Q. Mr. Rudick, you are the Deputy Commissioner of Maritime Affairs?

A. Of the Republic of Liberia.

Q. And how long have you held that position?

A. Since May, 1955.

[fol. 93] Q. That was by appointment?

A. Yes, sir.

Q. Did you apply for it?

A. I was appointed.

Q. They just didn't pick your name off the air, did they?

A. Well, I am a maritime attorney and they were looking for someone with experience, someone with the proper background, and they hired me.

Q. You are a maritime attorney and you are admitted to practice in New York State?

A. Yes, sir.

Q. And they sought you out?

A. In a sense, yes, sir.

Q. Did you receive a letter from them?

A. I was asked to speak to the Ambassador and other people connected with Liberia.

Q. The Ambassador here in the United States?

A. The Liberian Ambassador, yes.

Q. And do you know whether there are any other Deputy Commissioners such as yourself in any other part of the world?

A. No, there is only one Deputy Commissioner's office and that is here in New York at the present time.

Q. Aside from you, are there any other employees that are engaged in this particular operation with you in New York?

A. I have a staff which I hire on a contract basis and I pay for them.

Q. Where do you maintain your office?

A. 103 Park Avenue.

Q. Is that with your law office?

A. No.

Q. When you say that the *Victoria* was owned by a Liberian citizen, do you mean it is owned by a corporation organized under the laws of the Republic of Liberia; is that right?

A. Yes. The Republic of Liberia considers Liberian citizens corporations as well as individuals.

[fol. 94] Q. And I suppose your answer would be the same with respect to the ownership of Incres?

A. Incres?

Q. I don't mean Incres. Withdrawn. Of the *Nassau*.

A. I said it was the same ownership; yes, sir.

Q. And that is a Liberian formed corporation, is that right?

A. A Liberian corporation, yes.

Q. And you don't know who the officers of this corporation are, do you?

A. No, I do not.

Q. Is it part of your functions to ascertain who the officers are?

A. No, it is not.

Q. You are not interested in that; are you?

A. I am interested in the fact that she has to be a valid Liberian corporation in good standing.

Q. That means that it is organized under the laws of the Republic of Liberia?

A. I have been informed by Liberia that she is a Liberian corporation.

Q. Is it part of your functions to ascertain or determine the nature of the voyages of vessels flying the Liberian flag?

A. By "nature" I gather you mean where they go?

Q. Where they go?

A. The Republic of Liberia, as I understand it, has the same restrictions that the United States has, C-1 and C-2, that is, trade with Communist countries. It places no restrictions whatsoever upon where vessels may go.

Q. So that the Republic of Liberia doesn't care where the *Nassau* or the *Victoria* goes?

A. If they don't go to a Communist country.

Q. That is all?

A. Yes.

Q. You know that these vessels—I am referring to the *Victoria* and the *Nassau*—regularly operate between New York City and the Caribbean, is that right?

A. You asked me, do I know?

[fol. 95] Q. Yes.

A. I heard talk to that effect, yes. I also know that the *Nassau* goes over to Italy and the *Victoria* I think, has a couple of cruises around the world.

Q. How often does the *Nassau* go to Italy?

A. I do not know.

Q. How many cruises does the *Victoria* make around the world?

A. That I don't know either.

Q. On the cruises that the vessel makes around the world where does the voyage originate?

A. In the United States.

Q. From New York, is that right?

A. I believe so.

Q. Have you ever had occasion to communicate with representatives of the Ineres Line in connection with your duties?

A. Yes.

Q. And with whom have you communicated?

A. I usually write the company.

Q. Where?

A. You are talking about the owners of the ship?

Q. I am asking you whether you ever had occasion to communicate with representatives of the Ineres Nassau line?

A. Ineres Nassau Line, yes. I have communicated with Mr. Barnett in London in connection with the registration of this vessel and the *Nassau*.

Q. That was in connection with the registration. Has there been any other communication?

A. Yes, there has.

Q. Will you tell us about the others?

A. Well, since the vessel has been registered I have communicated with London a number of times.

Q. Have you ever communicated with the company's office at 39 Broadway?

A. You mean Ineres Steamship Company, Ltd.?

[fol. 96] Q. Yes. I have several names here. There is Ineres Line. Did you ever communicate with an Ineres Line located at 39 Broadway?

A. I believe I have.

Mr. McAllister: Your Honor, may I object to that question. It assumes that Ineres Line itself has its office at 39 Broadway. There has been no such showing.

The Court: Sustained.

Q. Did you ever communicate with anybody at 39 Broadway concerning the Ineres Line or concerning the vessels *Victoria* or *Nassau*?

A. I believe I may have, yes.

Q. With whom, do you know?

A. I don't know.

Q. And what form did that communication take? Was it in writing or was it by telephone?

A. Most of the time by writing. There have been telephone conversations.

Q. When you wrote to 39 Broadway, did you address it to any particular company?

A. Well, I must have, yes.

Q. Do you recall the name of the company that you used when you communicated with someone at 39 Broadway?

A. Since there are several companies involved in here, —I mean you have given me names, I am not quite sure which of them.

Q. Did you ever communicate with an Incres Line at 39 Broadway?

A. An Incres Line? You are not speaking of the registry ownership?

Q. I don't know, I am just asking you, did you ever communicate with an Incres Line?

A. Yes, I believe I have.

Q. And did you communicate with any particular person at Incres Line at 39 Broadway?

A. Let us put it this way: I have communicated with [fol. 97] a Mr. Wolfson. Whether he is with Incres or not, I don't recall right now.

Q. What was the nature of your business with Mr. Wolfson when you communicated with him? What did you talk about?

A. With respect to the two vessels.

Q. The operation of the two vessels?

A. By operation you mean—

Q. When you say you communicated with him in connection with the two vessels, I would like to know specifically.

A. All right, questions that may have arisen concerning perhaps some documents required in connection with these vessels.

Q. In connection with its registry?

A. In connection with the officers' licenses.

Q. By officers you mean those who work aboard these two vessels?

A. Yes.

Q. And you communicated with Mr. Wolfson, is that right?

A. Yes.

Q. Did he ever communicate with you on that?

A. Yes.

Q. And did you get the information that you needed when you communicated with him?

A. I guess so; yes.

Q. Did you ever receive correspondence from him?

A. Yes.

Q. Do you have that correspondence in your files?

A. Yes.

Q. Will you arrange to produce those, sir?

A. May I say something. I think I would have to communicate with my attorney, since mine is an official office of a sovereign government. I have to consult to see whether or not the Government itself would want to make them available.

Mr. Ostrin: I respectfully request, if your Honor please, [fol. 98] that the witness be directed to produce correspondence with Mr. Wolfson.

The Court: I think I am in a similar position as the witness. I would like to have some light on that, as to whether I may.

Mr. Ostrin: Let us see what they are, and your Honor can then tell.

Mr. McAllister: Your Honor, I don't think there has been any showing of the relevance of this extraordinary request made in court here this afternoon. We are going to have before us the officers of the corporation involved here. Mr. Wolfson will testify, Mr. Berlingeri, the president of the steamship company. They will testify directly.

Mr. Ostrin: I think there is a great deal of relevancy in this, your Honor. This man has testified that he has spoken to Mr. Wolfson concerning the registry of the vessels, concerning the officers of the vessels. This is precisely the point I would like to make.

Q. Did you ever communicate with any other person at 39 Broadway concerning the *Nassau* or the *Victoria?*

A. Yes, a Mr. Jordan.

Q. Mr. Jordan?

A. Yes.

Q. How do you spell that?

A. J-o-r-d-a-n.

Q. And do you know what connection he has with the two vessels.

A. I think that was in connection with the officers' licenses.

Q. Also with regard to officers' licenses?

A. Yes.

Q. Have you received correspondence from Mr. Jordan?

A. It is quite possible, yes.

[fol. 99] Q. Is there any other person that you communicated with at 39 Broadway concerning the *Victoria* and the *Nassau?*

A. I don't believe so.

Q. Do you know a Mr. Berlingeri?

A. Yes, I do.

Q. Will you tell us how you know him?

A. I have met him socially.

Q. Do you know whether he occupies any position in connection with the Incres Line or the two vessels?

A. I believe he is associated now at the same address.

Q. At 39 Broadway?

A. If that is the address, yes.

Q. Did you ever meet him there?

A. I don't believe I have ever met him there.

Q. You met him socially?

A. Yes.

Q. Where?

A. I met him on board.

Q. In New York?

A. Yes. I met him on board the *Victoria.*

Q. Did you ever meet him in New York, socially?

A. I think I have a recollection. I am not quite sure.

Q. Can you reach him at 39 Broadway if you want to?

A. I think I probably could. I might be able to.

Q. Do you know whether he resides in New York?

A. No, I do not.

Q. Do you know whether he occupies any office in Incres Steamship Company, Ltd., or the Incres Line?

A. As a fact?

Q. Yes.

A. You are asking me as a fact?

Q. Yes.

A. You are asking me a fact, or what I believe?

Q. Well, do you know as a fact?

A. No.

Q. Have you ever had occasion to discuss or communicate with Mr. Berlingeri concerning the *Nassau* or the [fol. 100] *Victoria?*

A. No, I don't believe I have written him.
Q. Pardon me?
A. I don't believe I have written him.
Q. Have you spoken to him?
A. Yes.
Q. In what connection, sir?
A. Well, I was on the *Victoria*.
Q. You mean recently?
A. Yes.
Q. These certificates are issued in New York, is that right?
A. These are, yes.
Q. What is done with them then? They are mailed to where?
A. The original certificate goes on board the ship, one copy is kept in my office, and two copies are sent to the offices of the Commissioner in Monrovia.
Q. The office of the Commissioner?
A. Yes.
Q. These vessels are registered under the Liberian flag, isn't that right?
A. Yes, sir.
Q. And the Liberian Government determines whether or not these vessels should be so registered, is that right?
A. That is right.
Q. And that is not your determination, is it, whether these certificates should be issued?
A. No. When an application comes in, it has to come into my office.
Q. You would forward it on?
A. I communicate with Liberia with respect to an official number, a radio call asking them to check.
Q. And then they authorize you to issue the documents?
A. That is right. You notice, the documents are issued, it says The Commissioner of Maritime Affairs by.
Q. The decision is made in Liberia, documents are issued by you, and then they are sent back to Liberia; is that the procedure, orat least two copies?
A. Yes.
[fol.101] Q. Explain why the documents are not issued directly out of Liberia, if you know.

A. Yes. The ship may be registered either here or in Liberia. If the application was filed directly in Liberia, the document would have been issued there.

Q. Mr. Rudick, in the back of Exhibit 2 there is reference to a mortgage; right?

A. Yes.

Q. Do you have a copy of Exhibit 2 in front of you?

A. No, I don't.

Q. There is a reference to a mortgage, is that right?

A. Yes.

Q. And is the name of the mortgagee indicated?

A. That is right, it is.

Q. And what is the name of the mortgagee?

A. Bank of America.

Q. And that is a New York bank?

A. The Bank of America?

Q. Yes.

A. I thought it was a California bank.

Q. It is an American bank, isn't it?

A. Yes.

Q. So I understand it that the Bank of America has extended a mortgage loan to the owner of the *Victoria* on the basis of the endorsement appearing on the back of Exhibit 2?

A. Yes.

Q. And is the amount indicated?

A. Yes, it is.

Q. Will you tell us what the amount is, please?

Mr. McAllister: Your Honor, the document speaks for itself.

The Court: Overruled.

A. The amount is $4,000,000.

Q. And that mortgage loan is still outstanding?

A. There are two mortgages on this vessel. There is one to a foreign mortgagee, Fiat. You are speaking about both mortgages, I assume?

[fol. 102] Q. I am interested in the American one. If you want to put the other one in, go ahead. The mortgage with the Bank of America is for $4,000,000, is that right?

A. That is correct.

Q. And that loan is still outstanding?

A. As far as the records would show, yes.

Q. Now, will you look at Exhibit 1, please. Is it correct that there is an indication of mortgage financing there with respect to the *Nassau*?

A. Yes.

Q. Will you tell us who the mortgagee is?

A. I see the first mortgage to the Bank of America.

Q. In what amount?

A. And a second mortgage to a foreign mortgagee, Fiat.

Q. What is the amount of the first mortgage?

A. $4,000,000. This is a fleet mortgage. It covers both ships.

Q. When was that issued?

A. The mortgages, I don't have a date, but it was endorsed, the original mortgage was endorsed on April 7th, 1959.

Q. Recently issued, is that right?

A. The other mortgage to the foreign mortgagee was in January, 1960.

Q. And the amount on that is what?

A. $139,779.

Q. The $4,000,000 loan was extended to the owners by the Bank of America, is that right?

A. That is true. Some of our ships have much greater ones with British bankers.

Q. We are addressing ourselves to these vessels.

Mr. Ostrin: I move that so much of the answer which refers to other ships be stricken.

The Court: What is it?

[fol. 103] Mr. Ostrin: The witness started to testify about mortgages covering other ships and I requested that that portion of his answer be stricken. I ask your Honor for a ruling.

The Court: I will strike it out.

Q. Do you know, Mr. Rudick, whether either the "*Nassau*" or the "*Victoria*" has ever been to a Liberian port?

A. No, I do not know.

Q. Do you know whether the Liberian Republic inspects either the "*Victoria*" or the "*Nassau*"?

A. Most definitely they do.

Q. Where?

A. They inspect them through their agents, which are the Classification Society, wherever the Society can get the vessel.

Q. Where would that be?

A. It could be anywhere. It could be when it is in Italy, when it is in the United States, or anywhere.

Q. What is the Classification Society?

A. In this particular case, Lloyds Registry of Shipping.

Q. What does their inspection consist of, do you know?

A. Their inspection consists of full compliance with the International Convention for safety of life at sea. It requires a safety certificate for the vessel, the same requirement as any other vessel would be required in any other country that is signatory to the Convention.

Q. Do you know whether these vessels are also inspected regularly by the United States Coast Guard?

A. I imagine any foreign flag vessel coming into a U. S. port would be subject to inspection by the United States Coast Guard and the United States Department of Health.

Q. Inspected for the purpose of safety to passengers?

A. Under the International Convention of safety of life at sea every signatory has a right and does inspect [fol. 104] every ship coming into its port, whether it is Liberian, British, or other.

Mr. Ostrin: I have no further questions.

Redirect examination.

By Mr. McAllister:

Q. Mr. Rudick, you identified Fiat?

A. Yes.

Q. As one of the mortgagees. What is that?

A. I imagine they are the people that supplied the machinery for the "*Victoria*."

Q. Do you know the identity of Fiat?

A. It is an Italian company.

Q. In connection with officers of vessels of Liberian registry do you issue licenses for such officers?

A. Yes, I do.

Mr. McAllister: No further questions.

VINCENZO BERLINGERI, residing at 415 West 52nd Street, New York City, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. McAllister:

Q. Mr. Berlingeri, of what country are you a citizen?

A. Italy.

Q. What office do you hold in the plaintiff corporation, Ineres Steamship Company, Ltd.?

A. I am the president.

Q. And of what country is that a corporation?

A. Liberia.

Q. And does it own the two vessels, the SS. *Nassau* and the SS. *Victoria?*

A. Yes.

[fol. 105] Q. Where is the principal office of this corporation?

A. London.

Q. What is the nationality of the other officers of the plaintiff corporation?

A. Italian.

Q. Do you know the nationality of the stockholders of the plaintiff corporation?

A. Yes, I do.

Q. What is their nationality?

A. Italian.

Mr. McAllister: No further questions.

The Court: Do they live in Italy?

The Witness: They do.

Cross examination.

By Mr. Ostrin:

Q. Are you a stockholder of the corporation?
A. Unfortunately, no.
Q. You live here in New York?
A. Not all the time.
Q. Do you have an apartment in New York?
A. Yes.
Q. A residence of yours? You live here?
A. Yes, when I stay in New York I live there.
Q. And do you have an office in New York?
A. Yes.
Q. And where is your office located?
A. At 39 Broadway, at the office of the Incres Line I have a room for myself.
Q. You have a room for yourself for Incres Line?
A. No, for myself. The Incres Line premises has a room which I use.
Q. When you say Incres Line, do you mean Incres Steamship Company?
A. Not Incres Line Agency.
Q. You have an office there?
A. Yes.
Q. For yourself?
A. Yes.
[fol. 106] Q. And at this office you transact your business on behalf of Incres Steamship Company, Ltd.?
A. Yes.
Q. What is the nature of the business you transact at 39 Broadway?
A. Well, mainly the operation of the ship. Strictly the operation of the ship.
Q. Is it correct to say that the operations of the two vessels are conducted under your supervision and control out of your office at 39 Broadway?
A. No, it is not correct, because Incres Line Agency is acting as any other steamship agency. It is acting here in New York like our agency in Nassau, H. Curley & Fink, which means that they are taking care of all of the prob-

lems connected with the arrival, with the departure, with the booking of the passengers, the provisions, and other things.

Q. What do you have to do with the operation of the vessel? Personnel?

A. In what sense, hiring and discharging?

Q. Well, dealing with the personnel on the vessel, does that come under your duties and functions?

A. Dealing on a personal basis, yes. In other words—.

Q. Can you elaborate on that when you say dealing on a personal basis?

A. Yes, I can.

Q. Will you do so, please?

A. Certainly. Say, for instance, crew members come to me explaining their family problem or a personal desire, a personal matter. Someone wishes, for instance, if I can do something in order to move them from one lower rank to an upper rank.

Q. Promotion or demotion?

A. No. Say, for instance, one would want to be from a lower rank promoted to a superior rank.

[fol. 107] Q. You discuss that with them?

A. No, I don't. I discuss that with them. I said personal matters.

Q. Do you ever have any dealings with the Masters of either the "*Victoria*" or the "*Nassau*"?

A. In what sense do you mean?

Q. Concerning the operation of the vessel?

A. Of course.

Q. What sort of dealings?

A. Going aboard every time the ship arrives here to take a look how things are.

Q. How the vessel is functioning?

A. How things are kept; how the general appearance of the ship is.

Q. Does the Master of the vessel ever report incidents that may have occurred aboard the vessel while on voyage?

Mr. McAllister: Objection to that, your Honor. I don't think that is proper.

The Court: I will allow it. You may answer.

A. Does the Master report to me?

Q. Yes, incidents that occur on board the ship.

A. Concerning passengers?

Q. Or crew?

A. He might. In other words, it is not an established rule of the Line that he should report to me.

Q. Does he report to you?

A. I said it is not a rule.

Q. Whether it is a rule or not, does he report to you?

A. He might.

Q. Has he reported to you?

A. Sometimes.

Q. Has he reported the incidents that have been occurring on the two vessels within the last few days?

[fol. 108] Mr. McAllister: Your Honor, I object to that. He should confine this to the basic jurisdictional matter.

Mr. Ostrin: I submit that it has relevance in connection with labor operations in New York.

Mr. McAllister: I confined my direct examination to basic facts.

The Court: I will sustain the objection.

Mr. Ostrin: May I have this marked for identification, please?

(Defendant's Exhibit A marked for Identification.)

Q. I show you Defendants' Exhibit A for Identification and ask you whether that is the official letterhead of Incres Line at 39 Broadway address?

A. Yes, this is a photostatic copy of the stationery used at the office.

Mr. Ostrin: I offer it in evidence just for the limited purpose at this time of showing the stationery used by Incres Line.

With all due respect to your Honor, I don't think your Honor can read that.

Mr. McAllister: Your Honor, we have no objection. It is very clear that this corporation named here is not the plaintiff corporation, it is the Incres Line Agency, Incorporated.

Mr. Ostrin: It speaks for itself.

The Court: Mark it in evidence.

(Defendant's Exhibit A received for Identification.)

[fol. 109] Mr. Ostrin: May I read the caption into the record, your Honor?

The Court: Yes.

Mr. Ostrin: The letterhead reads as follows: "Ineres Line."

Directly under that: "Ineres Steamship Company, Ltd."

Directly under that: "Ineres Line Agency, Inc."

Directly under that: "General Agents."

Directly under that: "39 Broadway, New York 6, New York".

In the upper right-hand corner: "Cable Address: Ineresline."

Q. Mr. Berlingeri, I believe you testify that Agency, Ineres Line Agency, Inc., takes care of provisioning the vessels, is that right?

A. Yes.

Q. What does that mean, "provisioning the vessel."

A. From toilet paper to fuel.

Q. And in between is food, right?

A. Well, there are many things in between. That is the reason I went from one extreme to the other.

Q. What else does Ineres Line Agency, Inc. do in connection with these two vessels?

A. As I said before, the usual work involved with any agency.

Q. Rather than tell us the usual work, why don't you tell us specifically what it does aside from provisioning the vessel?

A. It may make arrangements for arrival and departure, checking the passengers on departure, providing landing arrangements on arrival booking.

Q. It takes care of all the passenger booking?

A. Yes, keeping books.

[fol. 110] Q. Then am I correct in understanding—

A. Advertising campaign.

The Court: The crew of the *Nassau* and the *Victoria*, where were they hired?

Q. The ship files a requisition with the Agency and then the Agency follows through, is that right?

A. Yes.

Q. Does that also apply to the fueling of the vessel?

A. Fueling?

Q. Fueling.

A. Cosmopolitan takes care of it.

Q. Does Cosmopolitan deal with the Agency?

A. Yes.

Q. The answer is yes?

A. Yes.

Q. And the Agency is engaged in these operations on behalf of Incres Steamship Company, or Incres Line, is that right?

A. When you said "Agency," you mean Incres Agency?

Q. Yes. It is doing all these things in behalf of Incres Line, is that right?

A. Yes.

Q. And in that connection there are occasions when Mr. Wolfson will take orders from you, is that right?

A. Yes.

Q. You know, do you not, that the Incres Line Agency, Incorporated, is a New York corporation; is that right?

A. Yes.

[fol. 113] Q. How long have you been residing in New York City, Mr. Berlingeri?

A. '58.

Q. Since 1958?

A. Yes.

Q. Do you know who the officers of Incres Line Agency are?

The Court: Inc.?

Mr. Ostrin: Yes.

A. Yes. One of them is Mr. Frank Barnett.

Q. Is that the same Barnett who is in London?

A. Yes.

Q. And he is an officer?

A. I am sorry, you said of Incres Steamship?

Q. I am asking for the officers of Incres Agency.

A. Oh, I am sorry. Mr. Wolfson, Mr. Gordon, Mr. Mohl, Mr. Grey, and Mr. Young, and myself.

Q. You are also an officer of the Agency?
A. Yes.
Q. And what office do you hold at the Agency?
A. Just officer. I don't have any other.
Q. Are you also a director of the Agency?
A. A director.
Q. And a member of the board of directors of the Agency, is that right?
A. Yes.
Q. Do you know who the other members of the board of directors are at the Agency?
A. Mr. Wolfson, Mr. Jordon, Mr. Mohl, and myself.
Q. Do you get paid as an officer of the Agency?
A. No.
Q. Do you get paid as an officer of Ineres Steamship Company?
A. Yes.
Q. Who are the other officers, again, of Ineres Steamship Company, Ltd. besides yourself?
A. Mr. Barnett as secretary. Now I don't remember the names.
[fol. 114] Q. Do you ever attend meetings in England?
A. Sometimes.
Q. With Mr. Barnett?
A. Yes.
Q. And at these meetings you discuss the operations of the Line and the vessels, is that right?
A. Yes.
Q. Then you take back those things and you discuss them here in New York with the Agency; do you?
A. If I think it is necessary.
Q. Then you do, is that right?
A. Yes.
Q. Do you know who the members of the board of directors of Ineres Steamship Company, Ltd. are? Are they the same as the officers?
A. Yes, sir.
Q. In other words, the same people who are officers are members of the board of directors?
A. Yes.

Q. And you are both an officer and member of the board of directors of Incres Steamship Company, Ltd., is that right?

A. Right.

Q. And you are an officer and a member of the board of directors of Incres Line Agency, is that right?

A. Right.

Mr. Ostrin: That is all.

Redirect examination.

By Mr. McAllister:

Q. Mr. Berlingeri, you testified that on occasion in response to his Honor's questions it is necessary to replace members of the crew, and you testified they came in by air or by water?

A. Yes.

Q. Where do these replacements come from?

A. Italy.

Q. Are these Italian seamen?

A. Yes.

Q. Are all of the seamen on the *Nassau* and *Victoria* Italians?

A. All with the exception, for instance, of a nurse on [fol. 115] board the *Nassau* who is from Switzerland and a nurse on board the *Victoria* who was—she resigned recently—who was British.

Q. In response to a question, you spoke about having an agent in Nassau.

What are the duties of the agent, Incres Steamship Ltd. in Nassau?

A. The same as Incres Agency here in New York.

Q. You referred to Cosmopolitan Shipping Company in your testimony?

A. Yes.

Q. What does that corporation do for your steamship line?

A. For the steamship line?

Q. Yes.

A. The accounting, and for the Ineres Agency, the operation of the ships; practically, they are the people who are having the file of the tugboats. In other words, we are using the port captain of the Cosmopolitan.

Mr. McAllister: No further questions.
Mr. Ostrin: May I ask some questions?
The Court: Yes.

Recross examination.

By Mr. Ostrin:

Q. Where does Cosmopolitan have its office?
A. 42 Broadway.
Q. Now I wonder whether you could explain this for us, Mr. Berlingeri. I picked up the telephone book looking for the address and telephone number of Ineres Line, and I found the address 42 Broadway.

Mr. McAllister: Your Honor, I object to this. This is not a question. Mr. Ostrin is simply testifying here.
Mr. Ostrin: It is a question.

[fol. 116] Q. I found the address 42 Broadway.

The Court: I will allow it.

Q. Does Ineres Line have an office at 42 Broadway also?
A. It had an office.
Q. It had an office or it has one?
A. In 42 Broadway?
Q. Yes.
A. It has an office.
Q. It has an office now?
A. In 42 Broadway.
Q. And is that Ineres Steamship Ltd. that has an office there or is it the agency?
A. It is the agency.
Q. So am I correct in understanding that the agency has an office both at 39 Broadway and at 42 Broadway? Is that right?
A. Not exactly, no.
Q. Will you explain it?
A. Yes.

A. Yes, they are.
Q. And they are Italian citizens?
A. Yes, they are.
Q. And replacements for them are—
A. All the crew are Italian.
Q. With the exception?
A. With the exception of the nurse, who is from Switzerland, and one waiter who is from Spain.
Q. Captain, what is the language of command of the SS. *Nassau*?
A. Italian.

Mr. Stratton: I have no further questions.

[fol. 119] Cross examination.

By Mr. Ostrin:

Q. Who are the tourists, the people who ride the ships? Are they Italians or Liberians in the main?
A. What do you say?
Q. The people, the passengers on your ship, are they mainly Liberians or Italians?
A. Mainly Americans.
Q. Has your ship ever been to Liberia?
A. Never.
Q. How often does your ship go to England?
A. Since I am in the command of the *Nassau*, it has never gone to England.
Q. It never goes to England?
A. No.
Q. How often does it go to Italy?
A. Once a year generally.
Q. About how many round trips does your ship make between New York and the Caribbean Islands during the year?
A. About thirty.
Q. Ten in a year?
A. About thirty.
Q. Thirty?
A. Yes.
Q. And this is the regular run, isn't it?

A. Yes; generally every week.

Q. Do you know Mr. Wolfson?

A. Of course I do.

Q. Do you deal with Mr. Wolfson in connection with your work?

A. Yes.

Q. In what way?

A. Well, as soon as I arrive generally he comes on board. I have a speech with him and I ask him what I need about supplies, about fuel oil, about food, about everything.

Q. Do you talk to him about the behavior of the crew at any time?

A. Well, generally not, you see. If there is something very, very important, I tell him, but otherwise—

Q. When you say very important, what do you mean?

A. Well, if there is, for instance, some work to disembark, [fol. 120] I do already, because it is my job, but if today, if there is something very important, for instance, in discipline, I inform him.

Q. That you disciplined somebody; is that right?

A. Yes.

Q. Do you ever deal with Mr. Berlingeri?

A. If he is on board, yes.

Q And do you ever tell him about disciplinary action that you may have taken?

A. No, I have not, but if he is on board, of course I do.

Q. If he is aboard, then you will tell him?

A. Yes.

Q. That you may have taken disciplinary action?

A. Yes, yes.

Q. So is it correct to say that sometimes you will report to Mr. Wolfson about disciplinary action that you took?

A. Yes.

Q. And sometimes you will report to Mr. Berlingeri; is that right?

A. Yes.

Q. And it all depends upon whom you see first?

A. Well, if they come on board I speak with them, but, of course, I make a report to the Ineres Line.

Q. To whom do you make the report, to the agency?

A. Yes.

The Witness: In Italy.

The Court: In Italy?

The Witness: Yes.

The Court: Was any agreement signed between the company and the crew as to what their wages would be?

The Witness: Yes, a written contract.

The Court: Made in Italy?

The Witness: They signed the contract in Italy.

The Court: For both of them?

The Witness: For both vessels. Excuse me. For the *Nassau*, yes. For the *Victoria*, they have been engaged in Italy and they signed the contract in Italy to be taken on the ship in Rotterdam or in Havre.

The Court: Do you have that contract?

The Witness: Not with me here.

The Court: Do you know whether it contained a provision with respect to wages?

The Witness: They are all listed. the wages, for the various men.

The Court: Does it also contain provision for the duration of the voyage?

The Witness: Yes, the pay for the duration of a season and when the ship is leaving. We have the wages for the whole season.

Q. From time to time does the company hire replacements for the vessels?

A. Yes.

[fol. 111] Q. And is it a fact that those replacements are flown to the United States?

A. If they are urgent, otherwise they can come by ship.

Q. Or by ship?

A. They may fly or by ship.

Q. When Incres Line sells these passengers tickets, engages booking, does it account to Incres Steamship Company, Ltd.?

A. To Incres Line?

Q. Yes.

A. Yes.

Q. And who arranges for repairs to the vessel in the event repairs are needed here in New York?

A. The Technical Department.

Q. Of what company?

A. Up to last year it was Cosmopolitan Shipping Company.

Q. Who orders the repairs? Does the Agency order the repairs?

A. What do you mean, who signs the bill for the repairs?

Q. Yes, who orders it? Supposing a repair is necessary. The vessel is here in New York. Who authorizes that the repair be done?

A. Mr. Wolfson.

Q. Mr. Wolfson?

A. Or after discussion with me when I am here. I am not here all the time. I can authorize the repair.

Q. Do I understand that when you are here, you would authorize it, and if you are not here he would do it on his own, is that right?

A. He may make a telephone call or contact other parties by wire or any other means of communication because sometimes you need some technical advice.

Q. Do I take it then that he reports to you?

A. Not necessarily to me. Maybe he talks to a technician.

Q. I don't think you understand my use of the word "report." Does he consider you to be his superior?

A. In a way.

[fol. 112] Q. In what way, sir?

A. Well, as, for instance, our agent in Nassau can consider me his superior just because the company gives the business to the Agency. It is the president.

Q. Am I correct in saying, and is this correct, that when repairs are necessary to the vessel Mr. Wolfson will order them; is that right?

A. Yes.

Q. He determines what provisions go aboard the ship, is that right?

A. Well, let us say the ship makes a requisition.

Q. Who does it make the requisition from? From Mr. Wolfson?

A. No. Our Agency here receives the requisition from the department on the ship and they pass it through.

Q. The agency does have an office at 42 Broadway?

A. The address and the office of the agency is at 39 Broadway and 42 Broadway we still have, because we got—the lease has not expired yet, one or two rooms.

Q. Is that where Cosmopolitan has its office or just in the same building? Is that right?

A. In the same building. In other words, if I understood correctly your question, these two rooms are not in the office of Cosmopolitan. They are separate.

Q. But they are in the same building?

A. The same building only.

Q. And Cosmopolitan handles all of the operation for the agency?

A. For the port captain.

Q. Cosmopolitan is the port captain?

A. No.

Q. Or handles the operations of the vessel with the port captain, is that it?

A. We are using the port captain of Cosmopolitan.

[fol. 117] Q. You use their port captain?

A. Their port captain.

Mr. Ostrin: All right, that is all.

The Court: That is all, sir.

(Witness excused.)

The Court: We will take a recess until tomorrow.

Mr. McAllister: We have just one more witness, your Honor.

The Court: All right.

Mr. McAllister: I will ask Mr. Stratton to examine him, if he will, to make it more expeditious, I am sure, because he is familiar with him.

The Court: Call your witness.

Mr. Stratton: Captain Vagliasindi.

PAOLO VAGLIASINDI, residing on the Steamship *Nassau*, called as a witness, having been duly sworn, testified as follows:

Direct examination.

By Mr. Stratton:

Q. Captain Vagliasindi, what ship do you command, sir?
A. Steamship *Nassau*.
Q. Where is it docked?
A. Pier 42, North River.
Q. In Manhattan, New York City?
A. Yes, foot of Morton Street.
Q. How long has the *Nassau* been there, Captain?
A. Since Friday morning.

Mr. Ostrin: I object to any questions along this line, your Honor.

[fol. 118] Mr. Stratton: Just establishing jurisdiction, your Honor.

Mr. Ostrin: It has nothing to do with jurisdiction.

The Court: Go ahead, I will allow it.

Q. Captain, what flag does the *Nassau* fly?
A. The Liberian flag.
Q. Do you know what flag the *Victoria* flies?
A. Yes; Liberian, too.
Q. Captain, where were the articles of the *Nassau* opened?
A. In Genoa.
Q. When was that, Captain?
A. November 27th, if I am exact; maybe the 27th or the 28th, I don't know, is the date of the articles.
Q. If 1959?
A. Yes.
Q. Where was the crew recruited, Captain?
A. In Genoa.
Q. Did you hear the testimony of Mr. Berlingeri?
A. Yes, I did; not so well, because from there it is impossible to understand perfectly what they say here.
Q. Without going into details, is the great majority of your crew of Italian birth?

Q. And you also make a report to the steamship company?

A. The agency.

Q. You make a report to the agency?

A. Yes.

Mr. Ostrin: May I call for the production of the reports.

Q. Are these regular reports?

A. What?

Q. Are these regular reports that you make?

A. Yes, every week I make a report.

Mr. Ostrin: I would like to call for the production of the reports of the master to the agency.

[fol. 121] Mr. Stratton: Your Honor, there is no relevance to those reports to this hearing at this time. Perhaps when we get to another hearing for broader purposes those reports will become relevant.

Mr. Ostrin: I think they are, your Honor. I think the record so far shows a situation of interlocking directorates. That is clear. It shows that both the agency as well as the company receive reports from the master concerning disciplining of the crew, and I submit on the basis of some of the cases that the Board has had occasion to pass upon on jurisdiction, that interlocking directorates become material and important and that the handling of labor relations becomes material and important as well as the operations of the vessel.

Now, it seems to me, at least at this point in the proceedings, that there is a real relevancy in this thing, and I think on the basis of the record so far that there is a direct and intimate and interlocking relationship between the Ineres Line Agency, Inc., a New York corporation, and Ineres Steamship Company, Ltd.

I respectfully submit that we are entitled to examine the reports that the master makes with the agency.

The Court: Objection sustained; exception.

Mr. Ostrin: I have no further questions.

Mr. Stratton: Your Honor, just one question.

The Court: Yes.

[fol. 122] Redirect examination.

By Mr. Stratton:

Q. Captain, for what purposes does the ship go back to Italy?

A. For leave for the crew and for some repairs, generally.

The Court: What about the crew?

The Witness: Leave for the crew.

Mr. Stratton: Thank you, Captain.

Mr. Ostrin: Is that all for today?

Mr. McAllister: That is all we have limited to the facts that we believe to be important for the Court to consider in connection with the jurisdiction.

Mr. Ostrin: Your Honor, may I, in the interest of my zeal in this case—and I am not going to argue anything—but only because our brief does not contain a few cases which are referred to in our argument, may I ask your Honor to please look at the Brown Company case, 109 NLRB.

The Court: You gave me that.

Mr. Ostrin: 173.

The Court: Yes.

Mr. Ostrin: Where the Board held that the fact a majority of the employes involved were non-resident aliens did not divest it of jurisdiction; and may I also, although we cite the Afran case, recite it for one purpose and not for another. May I ask your Honor to look at the Afran case and the decision by Judge Van Pelt Bryan who held that because there is a serious doubt on the question of jurisdiction he would not issue a preliminary injunction.

We will send a copy of the decision. The case is cited.

[fol. 123] Colloquy

The Court: Do you have any testimony to offer on this question?

Mr. Ostrin: No, we don't have anything on this.

May I also point this out, your Honor, that there has been testimony adduced from this witness that the crew members are hired in Italy, and that articles are signed in Italy. In the United Fruit case where the Board took juris-

diction, all articles were signed in Honduras and a preponderate majority of the crew members were Hondurans and nevertheless the Board took jurisdiction and took the case and is considering a decision.

Again I say there can be no jurisdiction.

Mr. McAllister: May it please the Court—

The Court: Pardon me. If you gentlemen will come in tomorrow before we call the calendar at ten o'clock, I think I will decide this question of jurisdiction and then you can proceed from that point.

Mr. McAllister: Very well. The only statement I would like to make, your Honor, is that some of the statements made by my opponent with respect to the Labor Board cases are so erroneous that I would like to have some way of meeting them.

I received his brief this morning in court. For example, the reference here to the United Fruit Company case, as I understood it, was to the effect that the Board had taken jurisdiction. It has not taken jurisdiction.

Mr. Ostrin: I don't want to mislead the Court.

[fol. 124] Mr. McAllister: I point that out to the Court.

Mr. Ostrin: It is certainly not my intention, your Honor, to mislead the Court. This is what happened with United Fruit.

A petition was filed for certification as representatives. The company moved to dismiss on substantially the same arguments that were raised by Mr. McAllister. The Board said, as it did ultimately in Eastern Shipping, we will not dismiss. There are serious questions of fact and law. We will hold a hearing.

Now, this, in a sense, is what the Board did in United Fruit. This is what it did in Eastern Shipping. This is what it is mandated to do under the Act, and this is what is referred to by the Garmon case where it says if there is an arguable question it must first go to the Board.

The Court: You have repeated that so often, counsel, that it has made an impression on me.

Mr. Ostrin: If it has, then I am satisfied, your Honor.

Are we to come in tomorrow, Judge?

The Court: Tomorrow morning at ten o'clock.

Mr. Stratton: Will your Honor instruct the witnesses present in the courtroom that the subpoenas are to be adjourned until tomorrow at ten o'clock.

Mr. Ostrin: Assuming your Honor decides that there is no jurisdiction, then that is the end of the case.

[fol. 125] The Court: You will either be directed to the Appellate Division, or you, depending upon how I decide the jurisdictional question and leave the other matter open.

Mr. McAllister: Your Honor, if you decide the Court has jurisdiction, we wish to proceed with the hearing.

Mr. Ostrin: We don't know yet, Judge. We want to think about that, and we are not going to take too long about it.

The Court: I still think it is sensible to get rid of the whole thing and have them decide it up there once and for all rather than to decide one issue and have them dispose of it and maybe have to come back here.

Mr. McAllister: We have made so much progress this afternoon.

Mr. Ostrin: We sure have.

Mr. McAllister: I think it is an indication of how we can go ahead.

The Court: All right.

(Whereupon, an adjournment was taken to May 19th, 1960, at ten o'clock a. m.)

Thursday, 11 a. m., May 19, 1960

(Same appearances.)

The Court: First, gentlemen, allow me to apologize for the quality or should I say the lack of quality of my voice. I have been suffering with a persistent hoarseness which my doctor tells me is not of any moment but at the same [fol. 126] time it is disagreeable, and I hope you will bear with me in the course of my rather brief remarks in disposing of this phase of the case, this morning.

I have given careful consideration to the arguments made by both sides, as well as to the testimony which was offered here yesterday.

Can you gentlemen hear me?

Mr. Ostrin: Yes.
Mr. McAllister: Oh, yes.

ORAL DECISION DENYING DEFENDANTS' CROSS-MOTION TO DISMISS FOR LACK OF JURISDICTION

The Court: And I must confess that, while the matter is not free from doubt, I have come to the conclusion that jurisdiction resides in the State court. I have come to that conclusion on the basis of my very careful study last night of the principal authorities cited to the Court, namely Benz *vs.* Compania etc., reported in 353 U. S. 138, and Marine Cooks and Stewards *vs.* Panama Steamship Company, a very recent case decided on April 18, 1960, reported in the Supreme Court Reporter, Volume 80, No. 12, at page 779, *et seq.*

Mr. Justice Clark in the Benz case was very careful to note that: "Our study of the Act leaves us convinced that Congress did not fashion it to resolve labor disputes between nationals of other countries operating ships under foreign laws. The whole background of the Act is concerned with industrial strife between American employers and employees. In fact, no discussion in either House of Congress has been called to our attention from the thousands of pages of legislative history that indicates in the least that Con- [fol. 127] gress intended the coverage of the Act to extend to circumstances such as those posed here. It appears not to have even occurred to those sponsoring the bill."

Then, Mr. Justice Clark stated: "The problem presented is not a new one to the Congress." He then continues to consider the Seamen's Act of March 4, 1915, and draws a distinction between that Act and the one under consideration now, to show that where Congress intended to speak in regard to seamen's affairs, particularly foreign nationals, it did so in explicit language in the Seamen's Act of March 4, 1915, but was completely silent in the Act which is involved in this case.

I do not think it is necessary for me to recite the facts in the Benz case as it is clearly in the minds of both of the respective parties here. And that case would seem to be

squarely on all fours with the instant case, and would leave no doubt in the Court's mind but for the holding and some of the language in the Marine Cooks and Stewards case, alluded to before. If this case were to be decided solely upon the decision in the Benz case, the Court would be left with no alternative but to hold that the State court has jurisdiction in the instant case, as Congress has not undertaken to speak in relation to ships under foreign register involving seamen of foreign origin and nationals of a foreign jurisdiction.

We come now, before I allude to the facts here, to the [fol. 128] holding in the Marine Cooks and Stewards case. There Mr. Justice Black undertook to distinguish the two cases, and he said as follows: "The Benz case thus considered the jurisdiction of a State court not the jurisdiction of a Federal court, whereas the purpose of the Norris-LaGuardia Act was to restrict Federal court jurisdiction in controversies involving labor disputes. Nothing was said or intimated in Benz that would justify an inference that because a State court has jurisdiction to award damages in labor disputes the United States courts have the power to issue injunctions in like situations."

In a footnote Mr. Justice Black said: "Unlike the situation in the Benz case, in which American unions to which the foreign seamen did not belong picketed the foreign ship in sympathy with the strike of the foreign seamen aboard, the union members here were not interested in the internal economy of the ship, but rather were interested in preserving job opportunities for themselves in this country. They were picketing on their own behalf, not on the behalf of the foreign employees as in Benz."

I think that distinction is persuasive on the contested issue of jurisdiction in this case.

Then Mr. Justice Black said: "There is not presented to us here, and we do not decide, whether the picketing of petitioner was tortious under State or Federal law. All we decide is that the Norris-LaGuardia Act deprives the [fol. 129] United States court of jurisdiction to issue the injunction it did under the circumstances shown."

Now taking up the facts in the instant case: We find in the record, without dispute, that the *Nassau* and *Victoria*

were completely foreign owned, dominated and controlled; that the seamen on those ships were foreign nationals; that the officers of the Ineres Steamship Company, Ltd. were foreign nationals, although from time to time some of them were temporarily resident in this State.

Under these circumstances it would appear to me that the picketing in this case was not for the purpose of protecting the economic interests or the jobs of American seamen but for the purpose of protecting or acting in sympathy with the foreign national seamen aboard the *Victoria* and the *Nassau;* and that, therefore, would bring it squarely within the holding in the Benz case as pointed out by Mr. Justice Black in the succeeding case—the name always escapes me—in the Marine Cooks and Stewards case, wherein he undertook to draw a distinction between the holding in the Benz case and the holding in the Marine Cooks and Stewards case.

On the authority of these two cases and the language there employed and the reasoning, as well as on the basis of the undisputed facts in the instant case, the Court is constrained to reach the conclusion, as if announced at the outset, that the State court in the circumstances here pres- [fol. 130] ent has jurisdiction. And therefore the motion by the moving defendants to oust the Court of jurisdiction is denied, with an exception to the defendants.

Now, gentlemen, what is your pleasure?

Mr. Ostrin: May I—I don't suppose—

Mr. McAllister: May we proceed with our hearing on the temporary restraining order, your Honor, which is returnable. We have our witnesses here and we are prepared to go forward.

The Court: All right. • • •

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[fol. 138] Afternoon Session

2:00 o'clock p. m.

May 19, 1960

Mr. Stanton: Your Honor, before we call the first witness we would like to have the material that was introduced in evidence on the hearing yesterday considered on this matter as well, also the affidavits filed, so that we don't have to duplicate that record.

The Court: You mean the testimony taken?

Mr. Stanton: Yes, sir, I do.

The Court: That request is granted.

Stefan Cattaneo, residing at 400 East 56th Street, New York City, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Stanton:

Q. Mr. Cattaneo, by whom are you employed?

A. The Incres Steamship Company.

Q. And what are your duties?

A. I am the technical inspector of Incres Steamship Company.

[fol. 139] Q. Mr. Cattaneo, were you aboard the M/S *Victoria* Tuesday, May 17, 1960?

A. Yes, Tuesday.

Q. And were the passengers aboard the "*Victoria*" at that time?

A. Yes.

Q. How many times did you go aboard that vessel?

A. Tuesday at 2:00 o'clock?

Q. At 2:00 o'clock.

A. 15 or 20, I don't know exactly.

Q. Did more come aboard during the course of the afternoon?

A. In the afternoon, yes, after 2:00 o'clock.

Q. Was the vessel scheduled to sail that night?
A. Yes, in the afternoon.
Q. About what time?
A. Between 4:00 and 6:00 o'clock, in between.
Q. Did you see a small launch approach the M/S *Victoria* that afternoon?
A. Yes.
Q. At what time was that?
A. About two and a half.

The Court: 2:30?
The Witness: 2:30, that is correct, about.

Q. What were the markings on that launch?
A. The markings were UMD 2.
Q. And what did that launch do?
A. It is difficult to speak English.
Q. Go as far as you can.
A. I'll try. The launch was off the boat with a loud speaker and it speak Italian, and at the start he say: "You have member of the crew of the Steamship *Nassau* and we speak for the International Union."
Q. For the who?

The Court: International Union?
The Witness: International Union. And he speak Italian, [fol. 140] he have a crew member from the *Victoria*. He say: "You may—what you do—
Mr. Stanton: Maybe it would be easier if we use the interpreter.
The Court: Yes.
The Witness: I can't speak.
The Court: I don't find fault with you.
Mr. Ostrin: May we have an official interpreter, please?
The Court: We have an interpreter here. We have an Italian interpreter in the building, unless he or she may be occupied.
Mr. Stanton: Then may we proceed at this time in English as long as we can?
The Court: Do the best you can.
Repeat the question, please.

Q. What was said by the passengers aboard the U. M. D. 2, the people in the U. M. D. 2, over the loud speaker.

A. He was speaking in Italian and he say, "We have the group of the *Nassau* and we speak for the International Union, and you do what you like. First we say that you must go out."

Mr. Ostrin: May we wait for the interpreter?

The Court: What did they say?

The Witness: "We have crew of the *Nassau*."

Mr. Ostrin: May it please the Court, it is obvious this witness has difficulty with the English language. May we wait until the interpreter comes down and then he can say what the passengers said in Italian and we will get the translation.

[fol. 141] Mr. Stanton: May we have this picture marked for identification, your Honor?

(Photograph marked Plaintiff's Exhibit 3 for identification.)

Mr. Stanton: May I proceed to get the identification of this picture, your Honor.

The Court: The interpreter is here.

(The direct examination thereupon continued through the Official Interpreter, as follows):

Q. Mr. Cattaneo, I believe you testified that you heard the men aboard the U. M. D. 2 calling to the ship, the MS. *Victoria*. What did those men say?

A. First of all I want to be clear on this point, that I did not write down anything. I did not write. Maybe what I am saying, the words I am saying I am not sure whether they are the exact words I heard, but the meaning is that, the meaning of the words, the exact meaning:

"We are part of the crew of the *Nassau* and we are talking in the name of the International Syndicate. You do whatever you like to do, but we tell you to get down, to come down as soon as possible, and if they do not let you come down, we will tell you and show you how to come down. Once we have the law you will find how to go around it, to deceive it. You tell that you are sick, and report that

you are sick, and tell them that you have a bellyache. We will send you a doctor who will see to it that you will get down on the ground, on shore, and we will send you a boat to get you, and each one of you raise his hand, whichever is in accord with this," and at the same time they were [fol. 142] embarking people, getting passengers, people aboard. They were taking passengers aboard with the baggage and turning to the people who were taking care of the baggage, the people who carried the baggage: "Do not boycott us."

Then they read a letter written by President Berlingeri, who wrote to the crew of the *Nassau*, and they read this letter.

After reading the letter, they said. "These terms we could have accepted them a week ago, but now it is too late. And then what else?"

All this they said in the Italian language. And then at one point they switched to English and then they were taking passengers aboard with the boats, and then the loud speaker, the U. M. D. 2, with a loud speaker, turned toward the men in charge of the boat, this boat that was taking on passengers, and in the English language said, "Because the boat is going back to the pier to take on more passengers." It was empty, without passengers. This was said in English: "Your behavior, your act, is illegal. Come back."

Then at the end after this: "Let's go on shore and make a telephone call and we will come back. You wait for us because we will come back."

Q. I show you Plaintiff's Exhibit 3 for identification (handing to witness). Is that the U. M. D. 2?

A. Yes.

Mr. Stanton: I offer Plaintiff's Exhibit 3 for identification in evidence.

The Court: Any objection?

Mr. Ostrin: May I ask a question on the voir dire?

The Court: Yes.

[fol. 143] Mr. Ostrin: When you saw this boat, which is in evidence as Plaintiff's Exhibit 3 for Identification, was the man standing just where he is standing here?

The Witness: Well, the boat was there quite a while so that the man moved from one part to another. Except in instances he was just like that.

Mr. Ostrin: Is this a picture of the man that you saw?

The Witness: Well, I saw the boat from a distance. Yes, it is.

Mr. Ostrin: That is the man that you saw?

The Witness: Yes. I saw him from a distance.

Mr. Ostrin: And this is the man that you saw?

The Witness: Yes. At that distance, yes.

The Court: Did you see a man or is this the man you recognize?

The Witness: Well, I saw him from a distance, I didn't see from near, and from the distance I could see that this was the man. It seems to me that he is the man because I recognize from the clothing he had on.

Mr. Ostrin: How many men did you see on the boat?

Mr. Stanton: That is not proper on the identification of this picture.

The Court: I don't think it is.

Mr. Ostrin: The question is whether this is how he saw the boat. I don't know whether this picture was taken at [fol. 144] that time or this merely represents a picture of a boat that he had seen.

The Court: What do you say?

Mr. Stanton: It was taken at that time, your Honor.

The Court: The objection is sustained. I don't think that is proper on the voir dire, counsel. He identifies that as the boat. I think that is sufficient.

Mr. Ostrin: I submit to your Honor that there has been no proper foundation laid for the introduction of this picture at this time.

The Court: Let me have that picture.

Mr. Ostrin: Unless this witness took the picture.

The Court: Do you recognize this boat (indicating Plaintiff's Exhibit 3 for Identification)?

The Witness: Yes, sir.

The Court: Is this the boat that approached the *Victoria*?

The Witness: Yes, sir.

The Court: Were there some people on the boat at the time that it approached the *Victoria*?

The Witness: Yes, sir.
The Court: I will receive it, with an exception.

(Photograph previously marked Plaintiff's Exhibit 3 for Identification marked in evidence.)

By Mr. Stanton:

Q. Mr. Cattaneo, do you see any of the occupants of the boat that afternoon in this court room?
[fol. 145] A. I cannot be sure because of the distance I was. I cannot be sure.
Q. Did the crew then refuse to continue taking passengers aboard the "*Victoria*"?

Mr. Ostrin: Objection.
The Court: Then what occurred?
The Witness: Well, they continued to embark passengers and part of the crew took the baggage of the passengers but another part of the crew was waiting to get ready to get down from the gangway to go on the boat, ready to go on the boat.
Mr. Ostrin: Objection. I move that the last part be stricken, they were waiting, too.
The Court: What were they doing?
The Witness: They were near the gangway, on the gangway, on the steps, waiting to get down.
Mr. Ostrin: Objection. I move that "waiting" be stricken.
The Court: All right, strike it out.

Q. Did part of the crew refuse to obey orders of the officers?

Mr. Ostrin: Objection.
The Court: Sustained.
Were any of the officers of the "*Victoria*" giving any instructions to the crew?
The Witness: What instruction do you mean?
The Court: At that time you say they weren't doing anything, they were at the gang plank?
The Witness: I cannot answer you exactly but I know [fol. 146] that some of the officers made some of people waiting to get down to get away from there.
Mr. Ostrin: Objection.

The Witness: (Continuing) Not for the passengers. In order to be able to get the passengers aboard.

Mr. Ostrin: I move to strike out the answer.

The Court: I will allow it.

Mr. Ostrin: Unless we know the basis for his knowledge what the officers intended to do, this merely calls for the operation of his mind. We don't have any testimony as to what he saw.

The Witness: I was on the boat deck and I was looking outside of the boat and this ladder, it is outside.

The Court: Ladder?

The Witness: Ladder protrudes outside and from above I could see down.

The Court: What did you see?

The Witness: I first saw part of the crew standing ready to get down.

Mr. Ostrin: Objection to the use of the word "ready."

The Court: Sustained. Where were they standing?

The Witness: On the ladder. And then after, in a second moment they were made to get out of there.

Mr. Ostrin: Objection.

The Witness: (Continuing) So that the passengers would be able to embark.

The Court: Sustained.

[fol. 147] Did you hear or see the officers do anything with respect to these crew men that you said were standing there?

The Witness: No, I did not see, I did not hear any of them, but I know that they said these people to get away from there.

Mr. Ostrin: I move that the answer be stricken.

The Court: We don't have a jury here.

The Witness: In order for the passengers to come aboard, to let the passengers come.

The Court: If you did not hear them or see them how did you know what they were saying?

The Witness: Because the first officer was next to me.

The Court: And what did he say?

The Witness: He said to leave the ladder so that the passengers would be able to come up.

The Court: You heard an officer say that?

The Witness: Yes.

The Court: To whom was he talking?

The Witness: That is the Second Officer, the Second Mate.

Mr. Ostrin: I am going to move to strike what he concluded. All his remarks were conclusory. He has clearly testified he neither saw nor heard anything except what one officer said to another.

The Court: What ultimately happened? What finally happened?

The Witness: Then these people got away from there. [fol. 148] The Court: Which people?

The Witness: Those people who were standing and then a boat with passengers came near and so the passengers came aboard. At the same time—I am referring to what I said before—when I was talking about the loud speaker saying words in English it was talking to the empty boat that was going away in order to give room to the new boat, the other boat full of passengers, and this is the moment I am referring to when part of the crew was standing on the ladder.

Q. Did the *"Victoria"* sail that night, Mr. Cattaneo?

A. No.

Q. Where is the *"Victoria"* now?

A. It is at quarantine. She is at anchor in quarantine.

Q. Is that where it was at the time of this incident?

A. Yes, sir.

Q. Where are the passengers?

A. Now, you mean?

Q. Yes.

A. They embarked and they went on board. They did embark.

Mr. Stanton: I have no further questions.

Cross examination (Through the Official Interpreter).

By Mr. Ostrin:

Q. Mr. Cattaneo, you work for the Incres Steamship Company?

A. Yes, sir.

Q. That is the Ineres Steamship Company, Ltd.?

A. Yes, sir.

Q. And what job do you have there?

A. I am a technical inspector.

[fol. 149] Q. And what do you do as a technical inspector?

A. I was in charge of the alteration work of the "*Victoria*", that work that was made last year in Holland, and we were nine months in Rotterdam.

Q. Do you have an office in New York?

A. Well, I am here just for this *Victoria* to guarantee that everything is all right, to guarantee the work done in the Navy Yard. There is a year's guarantee for a year's work done on the ship.

Q. That is for the work done on the ship, is that right?

A. Yes.

Q. Do you know a Mr. Wolfson?

Mr. Stanton: Objected to, not proper cross examination, your Honor.

The Court: I will allow it.

A. Yes.

Q. While the work that you are supposed to do for the Ineres Steamship Company have you had any dealings or conversations with Mr. Wolfson?

A. You mean where, in Rotterdam?

Q. Here in New York or in Rotterdam?

A. Well, here in New York when I have some problem, technical problem,—when I need some assistance from the Agency I apply myself to Mr. Wolfson.

Q. Is that assistance in connection with the work done on the ship, the repairs and the improvements made on the ship?

A. Well, that is the normal assistance of an Agency when an inspector checks a boat and the installations and needs assistance, normal assistance, the usual assistance.

Q. Did he check the installations with you? Did he look them over with you?

A. What do you mean, check?

[fol. 150] Q. Did he look it over with you? Did he inspect them?

A. Which installation do you mean?

Q. All of the improvements that were being made on the *Victoria?*

A. No.

Q. Did you work with Mr. Wolfson in Rotterdam?

A. No.

Q. How often do you see Mr. Wolfson?

A. Well, it depends.

Q. How often have you seen him in the last month?

A. On working day very often because there is some time for a period I am on board and for the next period I am on shore. When I am on shore I have a desk in the Agency office of the Ineres and when I work in the office, of course, I see Mr. Wolfson.

Q. And you have a desk in the office of the Agency?

Mr. Stanton: Your Honor, I am going to move again to cut off this line of examination.

The Court: Yes, I think we are getting back to the other issue of jurisdiction. I think I should have to make this shorter. In any event, it doesn't seem to be germane to the issue.

Mr. Ostrin: I submit, your Honor, and I submit most strongly that it is germane. It goes to the Marine Cooks and Stewards case on which your Honor relied so heavily, and it goes to the jurisdiction. Jurisdiction is always an issue. Jurisdiction is at all times an issue.

The Court: I have determined that already.

[fol. 151] Mr. Ostrin: But it is still at issue and it goes to the question of labor disputes, your Honor.

The Court: All right, just go right ahead but don't touch on that subject.

Mr. Ostrin: May I have an exception. I respectfully submit to your Honor while your Honor may have disposed of the issue of jurisdiction and we have consented to proceed with this action, while this is at the present time a hearing on the preliminary injunction the question of the jurisdiction of the Court may never be waived; the question of the jurisdiction of the Court is always at issue.

The Court: Go right ahead, will you, please?

Mr. Ostrin: May I have an exception.

The Court: Surely. Under the Civil Practice Act you have an exception without taking one.

Mr. Ostrin: May I also point out, your Honor, that we are dealing with the Association in this case between, ostensibly, an Italian owned corporation and an American Agency incorporated under the laws of the State of New York.

We are also dealing with employment relationships, and I respectfully submit to your Honor that in view of all of these issues that are involved, even on the issue of a temporary injunction, on the question of whether or not there is a labor dispute and whether this labor dispute is between employees and an American or a foreign owner, or operator, is most important.

[fol. 152] Now, it is patently clear from what we have adduced so far from this witness that he is employed by Ineres Steamship Company, Ltd., but that he takes his orders and directions and reports to the agency; that he has an office in the agency; that he works out of the agency. Now, this to my mind, your Honor, shows a clear and definite connection and association between an American Corporation and an Italian Corporation, both of whom together, jointly operate these vessels, so that we are now dealing with a wholly owned or wholly controlled foreign corporation.

The Court: So far the evidence has disclosed, and only disclosed, that it is a wholly owned corporation managed, dominated, and controlled by foreign nationals, and it is registered under a foreign flag. The seamen involved are seamen of a foreign nation. Now, that disposes of that issue.

Mr. Ostrin: I believe your Honor said in your opinion this morning there is no dispute between the parties as to whether this was a foreign owned corporation, and we have always disputed that. We disputed it yesterday and we dispute it now.

May I also point out, if your Honor please, that there is not a single allegation in this complaint or in the moving affidavits that this is a dominated and controlled foreign corporation or company.

The Court: Initially you disputed, as an adversary, as an attorney in the case. I am speaking from the standpoint [fol. 153] of the factual picture presentation. From that standpoint, there is no dispute.

Mr. Ostrin: On the basis there was clear and convincing testimony that you had an interlocking directorate between the American corporation and the foreign corporation, and that Mr. Berlingeri operated as an officer of both.

The Court: All right, counsel. As I said before, you will have to take it as I give it to you, and that is all you can do. Later you can correct me if I am in error. You can correct me in the Appellate Division.

Q. What time did you board the Victoria on Tuesday of this week?

A. I went on board at 8:00 o'clock, and I went back on shore at 11:00 o'clock and then I went back on board about 1:15 with the first passenger boat, and then I returned on shore about 3:00 A. M.

Q. Were all of the members of the crew of the Victoria aboard the vessel?

A. Maybe one or two people of the crew wasn't there. I think the crew was complete. Well, it was completed, because they had to leave.

Q. And was the crew doing its duty, performing its duties?

A. Yes, sir, at 2:00 o'clock.

Q. I think you said that about 2:30 in the afternoon of that day you saw the U. M. D. 2, is that right?

A. About. I didn't look at the watch.

Q. And where were you standing at that time?

A. About 2:30 I was in the office of the Chief Purser when I heard a loud speaker, which was not normal. I went out on the boat deck and I stayed there all the time.

[fol. 154] Q. Where is the boat deck in relation to the ship?

A. What do you mean, where?

Q. Have you got a picture of the ship here? You know where the boat deck is?

A. Yes.

Q. But maybe I don't know. Where is the boat deck on the ship?

A. I can make a sketch for you.

(Witness makes sketch.)

Mr. Ostrin: May I have this marked for identification, please?

(Defendant's Exhibit B marked for identification.)

The Witness: It is not an exact sketch. I just drew it by hand.

Q. As I understand it, Mr. Cattaneo, you were standing just where the arrow is, as you look to the left of the picture, is that right?

A. I don't know exactly where I was standing—I know where I was, but I wasn't standing all the time in one spot.

Q. Will you indicate by a little cross-mark just about where you were standing?

A. Here (indicating). But not all the time. Most of the time I was there.

Q. And were you standing alone?

A. No, there were other people there.

Q. Passengers?

A. No, not passengers.

Q. Were they members of the crew or were they officers?

A. The majority were officers, because in that boat you find the officers' quarters on the deck.

Q. How far away from where you were standing was the *U.M.D. 2*?

A. Well, the distance wasn't always the same.

[fol. 155] Q. What was its closest point to you?

A. I can't say exactly. I can say more or less, about.

Q. Was it further away than the end of the room is from you now?

A. Yes, farther away, more.

Q. Would you say three times as far?

A. About, yes. It is very hard to judge when you are at sea. I can only say about.

Q. Would you say it was about 300 feet?

A. I cannot say exactly, I can only say about.

Q. But you were not able to recognize the people who were on the boat, were you?

A. It was a distance that if I had seen a person, I wouldn't be a hundred per cent sure who that person was.

Q. So that you couldn't really recognize him, could you?

A. At that distance I could not recognize him. I could see whether it was a man or a woman.

Q. You could see whether they were men or women?

A. I recognize whether the man was about forty years of age or was a young man eighteen years of age.

Q. But you couldn't make out enough so that you could recognize that person?

A. I really did not pay attention, but I only could see the outline of the person.

Q. How many people were on this boat?

A. I cannot say exactly, because part of it was closed, but I saw two people for sure.

Q. Did you see at any time more than two?

A. I don't remember.

Q. How long were you observing this boat?

A. I didn't always look at this boat, but more or less I observed it during the time I was there.

[fol. 156] Q. And how long was that?

A. About half an hour. I didn't look at my watch; I can only say about.

Q. That is all I want to know. You said you didn't write anything down at all, didn't you?

A. No, only the number of the boat, *U.M.D. 2.*

Q. And you heard through the loud speaker, in Italian, "We are part of the crew of the Nassau," right?

A. Yes. Now I repeat again I don't know whether that was the exact words, but the meaning was that.

Q. That was the meaning of that, as you understood it?

A. Yes.

Q. As you understood it, they said, "We are part of the crew of the Nassau," right?

A. Yes.

Q. And then they said, "We are talking in the name" of what? What was the name?

A. I remember the word, "International." I don't know whether it was an International Syndicate or International Federation. I heard "International."

Q. And that is all you heard that you could make out, was the word "International": is that right?

A. Well, I heard the word, "International," but they were talking Italian, and I don't remember now whether they said "Syndicate" or "Federation" or "Union."

Q. They said, "You do what you want?"

A. Yes, sir.

Q. And I think you also said that they said, "We want you to come down"?

A. Yes, sir.

Q. Did any of the members of the crew of the *Victoria* leave the ship at that time, or at any time that you were on it?

A. No, nobody came down, because they could not go down. They wanted to get down, but they could not.

[fol. 157] Mr. Ostrin: I move that that be stricken, that they wanted to go down.

The Court: Strike it out.

Q. They did not get off the ship, is that right?

A. They couldn't unless they could swim.

Mr. Ostrin: I move that that be stricken.

The Court: I will allow that.

Q. They stayed on the ship?

The Court: Unless someone could swim away from Quarantine all the way to the dock.

Mr. Ostrin: By the same token, this witness does not know whether these people wanted to leave or didn't want to leave. He couldn't project his mind in advance, your Honor.

The Court: I will allow that.

Did they leave at any time thereafter?

The Witness: No, but part of the crew refused to leave.

The Court: Did any part of the crew leave at any time, since the boat arrived in New York Harbor?

The Witness: You are talking about the *Victoria?*

The Court: The *Victoria.*

The Witness: The *Victoria* didn't move from there. It was always in Quarantine.

The Court: And did the seamen remain aboard the ship all this time?

The Witness: Well, we were ready to leave, but there were discussions on board whether to leave or not.

[fol. 158] Q. Discussions aboard by whom? I don't know if I follow you.

A. With part of the crew.

Q. You are talking about discussions among the officers, is that right?

A. Oh, no, not among the officers.

Q. Let me see if I can understand one thing. Let us get it straight, and I want short, simple answers, if I can get them. Did any members of the crew of the *Victoria* leave that ship while you were there?

A. No.

Q. The answer is no, is that right?

A. No.

Q. So far as you know, did any members of the *Victoria* leave the ship from the time it got into New York to the present day?

A. Well, I don't know what you mean by leave, because some of the crew, they go off board, they go on shore, and they go back on board.

Q. Those who were off duty got off the ship and then when the time came to go back to work, they got on the ship; is that right?

A. Yes, that is true.

The Court: Then why didn't the boat sail?

Mr. Ostrin: I am going to object to that question, if your Honor please. I don't know this witness is qualified to say whether it did or it didn't sail.

The Court: Is there any dispute that the boat is still there?

Mr. Ostrin: The boat is still there and the crew is still there.

The Court: Why didn't the boat sail? The objection is overruled.

The Witness: Because part of the crew refused to leave.

[fol. 159] The Court: Refused to what?

The Witness: Refused to leave.

The Court: Leave what?

The Witness: Leave with the ship, to go with the ship.

The Court: They didn't want to work, is that what you mean?

The Witness: They did not want to leave.

Mr. Ostrin: I am going to object to that as being hearsay, like most of his testimony is, and based upon the operation of his own mind, and pure speculation.

The Court: Overruled.

The Witness: By leave I mean to sail.

Q. During this time passengers were going aboard the ship?

A. Yes, sir.

Q. And were they being helped aboard by the members of the crew of the *Victoria*?

A. Yes, sir, just part of the crew.

Q. The entire crew doesn't help one passenger get on board ship, does it?

A. That is exact. That is right.

Q. Is it correct to say that as many men of the crew that were necessary to help the passengers board the ship did help them?

A. Yes, sir, that is right.

Q. And did they help them with their baggage?

A. Yes, sir.

Q. Did you see any member of the crew refuse to help anybody with baggage?

A. No.

Q. You say that during the time the men were using the loud speaker on the UMD-2 that they read a letter from Mr. Berlingeri. Do you remember what they read? Do [fol. 160] you remember some of the things that were included in that letter?

A. I remember more or less.

Q. I show you now Defendants' Exhibit A in Evidence and ask you whether this refreshes your recollection as to what was said (handing to witness)?

Mr. Stanton: Your Honor, only the caption of that letter is in evidence. It has been introduced only for the limited purpose.

Mr. Ostrin: Now I am showing him the entire letter and saying if that refreshes his recollection.

A. This is the letter but I cannot say whether it was read in its entirety or just part of it.

Q. More or less it is correct?

A. More or less, yes.

Mr. Ostrin: I offer the letter in evidence in its entirety.

Mr. Stanton: I have no objection to the letter.

Mr. Ostrin: Now may I offer an official translation.

(Translation of Exhibit A received in evidence and marked Defendants' Exhibit A-1.)

Q. I understand that you testified that these men on the boat suggested that they would get a doctor aboard to help them get off the ship because of a belly-ache or something, is that right?

A. Yes, sir.

Q. Do you know of any doctor who went aboard the ship to give medical assistance to any crew member who claimed [fol. 161] having a belly-ache?

A. Not that I know. I know that as far as I know no doctor went on board.

Q. Do you know of any member of the crew of the *Victoria* who asked to be excused to go ashore because he was sick?

A. No, as far as I know I don't know. This is of my competence. It is not my business.

Q. Were the other things you just testified, the other things that you talked about, your business?

Mr. Stanton: Objected to as argumentative.

The Court: I will allow it.

A. I was a witness. I talk about things I have seen.

Q. By whom are you paid?

A. Incres Steamship Company.

Q. Are you paid by check?

A. Sometimes yes, sometimes not.

Q. And who hands you the check?

A. I receive payment, expense payments, from the Agency on account of the Incres Steamship Company.

Q. The Agency hands it to you, is that right?

A. I receive the payment through the Agency. So the payment was made from Rotterdam the same way.

Mr. Ostrin: I move that the latter part of the answer be stricken.

The Court: I will allow it.

Q. Were you paid in Liras or in dollars?

A. Here they pay me in dollars, payment for expenses because I live here. I live in New York.

[fol. 162] COLLOQUY

Q. How long have you been living in New York?

A. I arrived in New York with the *Victoria* from Le Havre.

Q. When was that?

A. January 25th. Since then I spent part of my time on board and part of my time on shore.

Mr. Ostrin: No further questions.

Mr. Stanton: No further questions.

(Witness excused.)

The Court: Because of the regrettable loss sustained with the passing of Mr. Justice Frank of the Appellate Division the Court will stay in recess in this case until 2:00 o'clock tomorrow. The entire court will recess for the day. I shall be here at 2:00 o'clock.

Mr. Ostrin: If your Honor pleases, may I at this time call upon the plaintiff to produce the agreement between the Agency and the Ineres Steamship Company? I would like to be heard on that.

The Court: What do you say?

Mr. McAllister: We see no relevance whatsoever to that document in view of your Honor's rulings, your Honor.

The Court: I think you ought to let him see it.

Mr. McAllister: Very well, we will.

The Court: Recess till tomorrow at 2:00 o'clock.

(Court thereupon adjourned to May 20th, 1960 at 2:00 P. M.)

[fol. 163] Friday, 2:20 o'clock p. m., May 20, 1960

The Court: All right, gentlemen.

Mr. Stratton: Plaintiff calls Captain Francesco Perilli.

Mr. Ostrin: If your Honor please, last night I requested production of the Agency agreement.

The Court: Yes. Mr. McAllister said he would produce it. Have you got it?

Mr. McAllister: You want it? I have to make a brief statement about it because we have been unable to find the original. It's an old document and we have found only a photostat of the copy of it which appears in the minute books five years ago. The original document itself we have not been able to find. The secretary has not been able to find as yet.

The Court: Do you state that that is a copy of it?

Mr. McAllister: I am so informed.

The Court: Substantially a copy of it?

Mr. McAllister: Yes, your Honor.

Mr. Ostrin: May I see it? And may I just have a moment or two to look at it, your Honor?

The Court: Yes. (A pause.)

Mr. Ostrin: You will hold this available for us when we need it?

Mr. McAllister: Yes.

Mr. Stratton: Plaintiff calls Captain Perilli, your Honor Captain Carilli?

The Court: Speaks English?

Mr. Stratton: Yes.

[fol. 164] Francesco Perilli, having been duly sworn as a witness for plaintiff, testified as follows, through Official Italian Interpreter Luciano Porcelli only where indicated:

Interpreter: The name is F-r-a-n-c-e-s-c-o P-e-r-i-l-l-i. The home address is Genoa. Genoa, Italy.

Direct examination.

By Mr. Stratton:

Q. Captain Perilli, by whom are you employed?
A. Pardon?
Q. By whom are you employed?
A. By the Ineres Line.
Q. What ship do you command?
A. Victoria.
Q. Where is the Victoria now?
A. She's at anchor off Staten Island.
Q. How long has she been there?
A. Since Sunday, about two o'clock.
Q. Is that Sunday, May 15th?
A. Pardon?
Q. May 15th?
A. Yes, May 15.
Q. Where had she come from?
A. From South America, Trujillo.

Interpreter: South America, Trujillo, Dominican Republic.

Q. Did she have passengers on board, Captain?
A. Yes.
Q. Where was she scheduled to dock?
A. Pier 42.
Q. Did she dock at Pier 42?
A. No.
Q. How were the passengers disembarked?
A. By tugs. By the Moran tugs.
Q. When was her next scheduled cruise?
A. Pardon?

[fol. 165] Q. When was her next scheduled cruise?
A. On the 16th.
Q. Captain, on the 15th was your ship the Victoria approached by this boat? I show you a picture of Plaintiff's Exhibit 3. Plaintiff's Exhibit 3.
A. Yes. Yes, I recognize it.
Q. And what did that boat do?

By the Court:

Q. Would you wait just a minute? I'd like to—

A. Well, the boat—

Q. Wait a minute, Captain. Before the ship got to Quarantine were there any discussions or negotiations on board the ship between the officers and the crew?

A. No, no.

Q. Was there any indication of any difficulty?

A. No.

Q. Trouble?

A. No.

Q. Or threatened strike?

A. No.

Q. Or picketing?

A. No.

The Court: All right. Go ahead, sir.

By Mr. Stratton:

Q. Had there ever been any such indications of threatened strike in the past on your ship, Captain?

A. No.

Q. What did the picket boat do, the *UMD 2*?

A. Well, I couldn't see it entirely, but it went in alongside the tug boat, you know, and I think, you know, told them to go away.

Mr. Ostrin: I'm sorry.

A. Told them to go away. To go away. They were close to the ship.

[fol. 166] By the Court:

Q. Wait a minute. Who told whom to go away? The boat came alongside?

A. The boat came alongside, with tugs.

Q. The tugs.

A. Yes.

Q. And then?

A. And then, you know, a man went on board.

Q. From your ship?

A. No, from this small boat.
Q. Came aboard your ship?
A. No, on board the tug.
Q. One of the tugs. I see. And then?
A. And then they went away.
Q. The tugs went away.
A. Went away.
Q. And then?
A. And then they came back, you know, later. When—
Q. Who came back later?
A. The tugs.
Q. The tugs came back later? Yes?
A. In the meantime, you know, the police boat came around the ship.
Q. Yes. Go ahead. Just continue.
A. And the police boat, you know, went to talk, you know, with the tugs, with the Moran tugs.
Q. Yes?
A. And after they came back and they disembarked with the passengers.
Q. The tugs?
A. The tugs.
Q. I see. All right. Now what about this—this boat—What do you call that?

Mr. Stratton: The *UMD 2*, your Honor.

Q. What did that boat do, if anything, when it approached the tugs? Anybody on that boat do anything or say anything?

(Interpreter spoke to the witness in Italian.)

[fol. 167] A. No, they didn't come on board. They went, you know, to talk with the tugs, that's all.

Mr. Ostrin: I'm sorry. I don't—I didn't hear that.
The Court: They went only on the tugs. They went only on the tugs.
Mr. Ostrin: On the tugs.
The Court: Yes.

By Mr. Stratton:

Q. Captain, were passengers brought on board the *Victoria* on Tuesday, May 17?

A. Yes.

Q. At what time did the passengers start to come on board?

A. Well, I think the first boat came about two o'clock.

Q. And what was the scheduled hour of departure of the *Victoria*, on the cruise?

A. We should have sailed at four o'clock but we were not ready at four o'clock.

Q. Where was the cruise going to go?

A. Pardon?

Q. Where was the ship going to go, with these passengers?

A. See if I remember now—we had to go to Bermuda.

Q. Did passengers continue to arrive after two o'clock?

A. Yes, till about half past five.

Q. Till about half past five.

A. Yes.

Q. And did you see the *UMD 2* on that day, Tuesday, May 17?

A. Yes.

Q. Will you tell us what happened then?

A. Well, that boat, you know, came around the ship, you know, and they told, you know, we are members, the crew members of the *Nassau*. And they started to talk, you know, inviting the crew our crew, you know, to join—

Mr. Ostrin: I'm sorry, I don't get that.

[fol. 168] A. —and inviting them to go ashore.

The Court: Wait a minute, Captain. Would you read that, please?

Mr. Ostrin: I'm sorry, I don't hear it.

(Last complete answer was read.)

Q. And what did they say, Captain?

A. Who?

Q. The people on the *UMD 2*?

A. They also, you know, say, you know, to our crew, the way they should use and not to leave the ship, you know,

telling they were sick, you know, and they needed, you know, medical assistance, you know. Well, and they said so many things that I can't remember exactly, you know.

Q. And did some of the crewmen then change into their civilian clothes?

A. Yes, about fifteen members of the engine department, they changed into civil dresses, you know, and they went on the gangway and are ready to leave the ship.

Q. And then what happened?

A. Then I sent—They told me about this, because I was on the bridge, and then I sent the staff captain down.

Mr. Ostrin: Excuse me. I'm going to object to anything that was told to him, as being hearsay.

The Court: All right.

Mr. Ostrin: He said, I was then on the bridge.

By the Court:

Q. Who told you? One of the men told you?

A. Yes. I don't remember who told me. An officer—I think the officer, the officer was on duty on the gangway.

Q. And what did he do? He came to see you?

A. He came to see me.

[fol. 169] Q. And he had— Wait a minute. And he had a conversation with you?

A. Yes.

Q. And after that what did you do?

A. I called the staff captain.

Q. Yes?

A. And I told him to go down and clear the gangway.

The Court: I see. All right.

Mr. Ostrin: May I get the last part of that? Told him to go down and—

The Court: Clear the gangway.

Mr. Ostrin: Clear the gangway. I'm sorry.

By Mr. Stratton:

Q. And after the staff captain left you, did passengers continue to come aboard the *Victoria*?

A. Yes.

Q. And how many passengers came aboard the *Victoria?*

A. I think one hundred and ten.

Q. And when had the last of them come aboard the *Victoria?*

A. About half past five.

Q. And when was it your intention to sail?

A. At once.

Q. Did you sail?

A. No.

Q. Why not?

A. Because the engine depart—the members of the engine department refused.

The Court: The members of the who? The members of what?

Interpreter: Engine department.

Witness: Engine department.

The Court: Oh, engine department. I see.

Q. Will you tell us the facts surrounding their refusal, Captain?

[fol. 170] The Court: Did you talk to any of them?

Witness: Oh, yes.

The Court: All right, tell us what you said to them and what they said to you.

Witness: Well, it was—

The Court: Not in the exact words but in substance.

Witness: Yes.

Q. Tell us the whole story, Captain.

A. The whole story.

Q. Yes.

Mr. Ostrin: I'm going to object to this, if your Honor please, unless there is some evidence binding these conversations with the defendant International Maritime Workers Union.

The Court: Well, we'll get to that. We can only do one thing at a time, apparently. Let's see what went on, why this boat did not sail. Go ahead, sir.

A. About half past two, two members of the crew department came to me and they said, we want to get in touch by telephone with the union.

Q. May I interrupt, Captain? Was that before or after the picket boat *USMD 2* came up?

A. Before.

Q. Before the picket boat came up.

A. Before. That was about half past two, and the picket boat came at three o'clock about. I refused, you know, because I said we are in the road and we can't use the telephone, only on emergency call. And that for me is not an emergency call.

Mr. Ostrin: I'm sorry, your Honor. I don't want to [fol.171] interrupt, your Honor, but I am having very much difficulty in getting the stafement of the witness. Perhaps we could do better if there were an interpreter. I'm just not getting everything that he says.

The Court: Well, he said that he told them he could not let them use the telephone because they were on the road, and that the telephone could be used only in case of emergency.

Mr. Ostrin: Well, was this—was this—

The Court: That's what he told the engine man.

Mr. Ostrin: Was this the engine man who was on the crew?

The Court: Yes.

Mr. Ostrin: A member of the crew?

The Court: Yes.

Mr. Ostrin: You see, I'm not getting this. I just can't—

Mr. Stratton: Perhaps if Mr. Ostrin could sit closer. I think we can hear over here.

The Court: Well, you can't get much closer than you are now, unless you want to come inside.

Mr. Ostrin: Well, I'll try here (moving to the rail).

The Court: All right.

Q. What happened next, Captain?

A. And after they went away. I told the engine, I can't give this permission because telephone is only for emergency call. And they went away. After three o'clock came the picket boat, you know, and you know what happened.

[fol. 172] By the Court:

Q. No, we don't know what happened. You tell us.

A. I told, I think I told before.

Q. You mean when they went on the tugs?

A. Yes, when they went on the tugs, you know, when people went on the gangway, when we clear the gangway. They came back again at five o'clock.

Mr. Ostrin: Who came back again?

Q. Who came?

A. These two representatives from the engine room—from the engine department.

Q. Yes?

A. With two representatives from the steward department. They were four. And they came back to me asking to get in touch with the union.

Q. Did they mention any name?

A. No, only the union.

Q. The union.

A. With the union. And they told me, we are ready to leave, and if we can't get in touch with the union, if you write a declaration, declaring that we can't get in touch with the union, we sail.

Q. We sail?

A. Yes, they said we sail. I told them, I can't write this declaration without the permission of the company. In the meantime I phoned to the company. And they told me the president of the line is on the way to the *Victoria*. He came on board about half past six, I think.

Q. President of the line?

A. President of the line, came on board about half past six, and I told him, you know, what was going on. We called back again, you know, the four representatives, and they repeated, you know, that they wanted to get in touch with the union. And it was about eight o'clock, after the [fol. 173] discussion we had, you know, with the four representatives. At last we said all right, get in touch with the union, but if you get—if you don't get any answer, you know, from the union, what are you going to do. They said, we are ready to sail. At eight o'clock we called first

number. Nobody answered it. Then we called a second number. And the girl answered on the telephone. And after, you know, one of the representatives said, I want to talk with Mr. Shannon, said, and Mr.—or Mr. Chanikolas, Canikolas. I don't remember exactly the name.

Q. You don't remember the name? You don't recall?

Mr. Ostrin: Yes, Chimiklas I think it is, C-h-i-m-i-k-l-a-s. It's something like that.

The Court: Well, would you identify him, who—Is he connected with the union?

Mr. Ostrin: Yes, he's connected with the union.

The Court: With the union? I see. All right, sir.

Witness: After thirty-five minutes about, the girl answered, and she said, I can't find the two gentlemen. Then I told, you know the four representatives. Well, you couldn't get in touch with the union; then you should be ready to leave, to sail, as you promised before. But then they objected, and they said, Before to say yes or no, we want to get in touch, you know, with the entire crew. And they gave—and asked me permission to talk with the crew. They went and they came half an hour later and they told me the crew doesn't want to sail.

[fol. 174] I repeated again and I told them, you know, to go down and do their duty. And they said, No, we don't sail. It was exactly nine o'clock. Then I told them, you know, from this moment you refuse to sail, and you are on strike. They said, Yes. And they went away.

By the Court:

Q. Did they leave the boat?

A. No, no, no. They went down in the engine and that's all right. Nothing happened, you know. Only they refused to sail but they accomplished, they did the work for the serving the passengers in the steward department, at the table. At ten o'clock some stewards came back to me and they said, the two representatives from the steward department, they don't represent anything, because we are sailing—we are willing, willing to sail.

After this declaration we assembled all the steward department, the dining room, telling them if they wanted to

sail. They said yes, we want to sail, we don't want to join, you know, the—we don't want to join the engine department in the strike. All right. Then the situation was changed, because before we knew that the engine department and the steward department didn't want to—to sail. Instead now we have only the engine department who didn't want to sail. At two o'clock at night we assembled again all the deck department—the engine department, asking them again if they wanted to sail. They said, No, we don't want to sail, we call before, we want to get in touch with the union. Then I told them, All right, tomorrow morning [fol. 175] as soon as possible you can go ashore and get in touch with the union. And at six o'clock I called, you know, by phone taxi boats and six members of the engine department went ashore. At 9:30 we had a phone call from shore, and it was the leader of this—of this six men, who wanted to talk, you know, with the representative who was on board.

By Mr. Stratton:

Q. Whom do you mean by that?

Mr. Ostrin: I'm going to object to this now. I don't know who the leader is, and this is all being reported to the captain.

A. The leader of the six men was Mr. Bucovaz, and the other representative that we had on board was a Mr. Chapperini.

Q. Those are members of your crew, Captain?

A. Members of the engine department.

Interpreter: C-h-a-p-p-e-r-i-n-i.

Mr. Stratton: B-u-c-o-v-a-z.

Mr. Ostrin: Is this a phone call to the—I don't know. I didn't get that. Is this a—

Witness: We had a phone call from shore, by radio phone.

Mr. Ostrin: Was the phone to you? The telephone to you?

Witness: Phone to the ship.

Mr. Ostrin: But did you speak on the phone?

Witness: First spoke Mr. Chapperini.

Mr. Ostrin: Whom did he speak to?

Witness: To Mr. Bucovaz.

Mr. Ostrin: I'm going to object to any conversations [fol. 176] between Mr.—the two gentlemen just named, since it was not a conversation with the Captain.

Witness: Later. Just a minute.

Q. Go ahead, Captain.

A. Because, you know, from shore, from shore Mr. Bucovaz was the leader, you know, of the six representative and called the ship. And the radio operator told him, what do you want.

Mr. Ostrin: I'm going to object to what the radio operator told.

By the Court:

Q. Did you hear this?

Mr. Ostrin: This is replete with hearsay.

By the Court:

Q. Did you hear this?

A. Pardon?

Q. Did you hear this?

A. I didn't hear that. No. The radio operator after came to me and said, Captain—

Mr. Ostrin: I'm going to object to that.

A. —there is Mr. Bucovaz wants to talk with Mr. Chapperini.

Q. I see. All right. And then you put him on the phone?

A. I went in the radio station and I assisted to the conversation.

Q. I see.

A. Yes. And from shore Mr. Bucovaz told Mr. Chapperini, We confirm the order not to sail.

[fol. 177] Q. And what did Mr.—the man aboard ship say?

Interpreter: Chapperini.

A. Said all right. That's all. Then I got the telephone and I asked of Mr. Bucovaz, Is this the order of the union?

Q. Yes? What did he say?

A. Well, he didn't know, you know, what to answer.

Mr. Ostrin: I'm going to object to anything he didn't know how to.

Q. Did he answer?

Mr. Ostrin: Now there's been an awful lot of hearsay so far.

A. At last he answered after a few seconds, he answered and he said, No, it is our willing, you know, we don't want to leave.

Q. We don't want to leave. I see.

A. The union let us decide if to leave or not. Then I asked again, you know, is the—is the union, you know—has the union confirmed, you know, the order not to sail? Then Mr. Bucovaz said, said in Italian, logical, it is logical.

Interpreter: It is logical.

By Mr. Stratton:

Q. Captain, were the passengers still on board?

A. Yes. And after this declaration, you know, I gave permission to the passengers to go ashore.

Q. And did they go ashore?

A. They went ashore.

[fol. 178] Q. What day was that? Wednesday?

A. Pardon?

Q. Was that Wednesday?

A. Yes. And at eleven o'clock, you know, they were all—all out.

Q. And was the cruise canceled?

A. Yes.

Q. Captain, where does the crew of your ship live now?

A. Pardon?

Q. Where does the crew of your ship live now?

A. On board. On board. Some of them are ashore, you know. Some of them are on leave. We gave short leaves, you know.

Q. And are you feeding them on board?

A. Yes.

Q. And are you providing launch service freely to them?

A. Yes.

Q. And they can come and go whenever they are not on duty; is that correct?

A. Yes.

Q. Captain, what nationality is your crew?

A. Italian.

Q. Where were they recruited?

A. In Genoa.

Mr. Stratton: No further questions.

Cross examination.

By Mr. Ostrin:

Q. Captain, you saw the boat that's on that picture for the first time on what day?

A. On Sunday, when we arrived.

Q. On Sunday when you arrived?

A. Yes.

Q. And what time was it that you saw the boat on Sunday? When you arrived?

A. Well, just after we arrived. About—we arrived at two o'clock, you know. About half past two, three o'clock. I can't remember exactly, you know.

Q. And what was the—This was on Sunday, right?

A. On Sunday. We arrived—

Q. And what was the boat doing?

A. Pardon?

[fol. 179] Q. What was that boat doing, the boat that's in that picture, plaintiff's Exhibit 3?

A. As I told before, they went to talk with the tug boats, you know, and after the tug boats went away. What they said I don't know because we were quite away. Can't tell you what they said, you know.

Q. You saw them approach the tug boats and then the tug boats went away.

A. Yes.

Q. Is that all that you saw this boat do on Sunday?

A. Pardon?

Q. Is that all that you saw this boat do on Sunday?

A. So I don't remember exactly, you know, what they did later, you know, because, you know, when the tug boats, you know, came around the ship, you know, when the tug boats came alongside the ship for disembarking the passengers, it was interesting to see the passengers off. And so I didn't mind very much, you know, what this little boat did.

Q. Now, did the men do—continue—the crew continue to do its work on Sunday?

A. The crew?

Q. Yes.

A. Yes.

Q. Nothing unusual?

A. Nothing.

Q. And did the crew continue to perform its duties after the boat that you saw was circling the *Victoria?*

A. Yes.

Q. And did the crew continue to perform its duties on Monday?

A. Yes.

Q. Now when was the next time that you saw the boat which is in evidence as Plaintiff's Exhibit 3?

A. Saw that boat again about three o'clock.

Q. About two o'clock?

A. Three o'clock.

Q. On what day? That was Tuesday?

A. Tuesday.

[fol. 180] Q. And you were standing on the bridge?

A. Not exactly on the bridge. I was on the boat deck.

Q. On the boat deck.

A. Just close to the bridge.

Q. And were you standing with anybody?

A. Well, I think so. Yes. There were other people with me, you know, I can't remember now.

Q. Any officers—

A. I remember—I remember quite close to me was Mr. Cattaneo.

Q. He was right close to you?

A. Pardon?

Q. He was right close to you?
A. Yes.
Q. You're sure of that. Were you talking to him?
A. Yes, we was talking together, you know.
Q. Pardon?
A. Yes, we were—
Q. How close to you was he?
A. We were talking like this, you know.
Q. Right next to—
A. Yes.
Q. Just like where the interpreter is standing next to you?
A. Yes.
Q. Now, you say you heard someone say something from the boat, the boat which is pictured as Plaintiff's Exhibit 3?
A. Yes.
Q. And what was it that you heard said?
A. Well, I heard so many things, you know, that I can't remember. But I heard them, you know, inviting our crew to join the *Nassau*, because they were fighting for the benefit, you know, of the crew. And one of them, you know, told, Come ashore, leave the ship as we did. And it was at that moment that about fifteen people from the engine department—yes—changed into civil dress and went to the gangway as I told before.
Q. How many members of the crew were present—
A. Where?
Q. On the deck of the ship?
A. Oh, about—that is very difficult to say because a lot were—were on deck. One hundred, one hundred and fifty. [fol. 181] Q. You'd say between a hundred and a hundred and fifty?
A. Maybe. You know, I couldn't see from the boat deck, you know. People were standing down on the promenade deck. I saw them, you know, on the bow only.
Q. And—
A. And they told, from the boat they told, you know, to the crew, if I—we will teach you the way to leave the ship. Tell them that you are—tell to your—to the captain or to

the officer that you are sick and that you need medical assistance.

Q. Well now—

A. And who is doing—and who is willing to do that, you know, raise the hand. And nobody raised the hand from the ship.

Q. Now later that day did any member of the crew tell you that he was sick and wanted to see a doctor?

A. No.

Q. Now, you say that some of the people from the engine department changed into their clothes?

A. Yes.

Q. Were all of those people on duty at that time?

A. No, they were not on duty I think because the—the engine—the watch was down in the engine room.

Q. Did any of the people who were on watch in the engine room change into their work clothes?

A. Pardon?

Q. I withdraw that question. Did any of the people who were on watch in the engine room change into their civilian clothes?

A. I don't know. I couldn't tell you.

Q. But you do know that those who changed into their civilian clothes were not on duty.

A. I suppose.

Q. Now customarily, Captain, when the vessel is in port, is it permissible for the people who are not on duty to go ashore?

A. Yes.

[fol. 182] Q. And as a matter of fact you have testified only a few moments ago that even now the people who are not on duty are permitted to go ashore.

A. Well, because we were—we were on the sailing time.

Q. All right. Now—

A. Because, you know, two hours before sailing, everybody must be on board, you know, according the law.

Q. Did those people leave the boat?

A. No.

Q. Would you say—

A. Because—

Q. —that the passengers who were boarding the ship—

Mr. Stratton: Just a minute. I think Mr. Ostrin cut off that answer.

Mr. Ostrin: Well, I submit that the question called for a yes or no answer. I asked him whether those people left the boat.

The Court: We have some language difficulty here and I think you ought to be—

Mr. Ostrin: I don't think that this witness is having any difficulty in understanding my questions.

The Court: You seem to have some difficulty in understanding him. You moved from one place to another and asked the stenographer to repeat it one or two times.

Mr. Ostrin: I'm sorry, your Honor, I just can't hear him.

The Court: I can't either on occasion.

Go ahead, finish the answer. Did you finish the answer? Or have you forgotten it now?

Witness: I said no, they didn't go ashore, because the staff captain, you know, forbade them to go ashore.

[fol. 183] Q. And they complied with his order?

A. Yes.

Q. Now during this time, as I understand your testimony, the passengers were boarding the ship?

A. Yes.

Q. Were the members of the crew assisting the passengers in boarding the vessel?

A. Yes.

Q. Were they carrying out the duties as was required of them during this time?

A. Yes.

Q. Now you said earlier that day, about 2:30 in the afternoon I think you said two members of the crew came to see you?

A. Yes.

Q. I wasn't too clear on that. And who were these two people?

A. Mr. Bucovaz and Mr. Chapperini.

Q. May I have the spelling of Mr. Bucovaz's name, please?

A. B-u—Bucovaz.

Interpreter: Bucovas, B-u-c-o-v-a-s.
Witness: Z.
Interpreter: Oh, Z. B-u-c-o-v— I don't know. This is not an Italian name.
Mr. Ostrin: Well, maybe the Captain can write it out and we can get the—
Witness: B-u-c-o-v-a-z.
Interpreter: Then do you want Chapperini?

Q. Well, before we get to Chapperini. Bucovaz, what was his position on the boat. What was his rating?
A. He was a motorman.
Q. A motorman. And is he employed in the engine room?
A. Yes.
Q. And would you give us the spelling or spell the name of the other individual for us?
A. Chiapperini.

Interpreter: C-h-i-a-p-p-e-r-i-n-i.
Witness: Yes.
[fol. 184] Mr. Ostrin: Once more, please.
Mr. Stratton: C-h-i-a-p-p-e-r-i-n-i.

Q. And what was Mr. Chiapperini's rating on the ship?
A. Chiapperini is a—a mechanic.
Q. And is he employed in the engine room?
A. Yes.
Q. Now am I to understand that both Mr. Bucovaz and Mr. Chiapperini came to see you sometime before you noticed that *UMD 2* boat; is that right?
A. Yes.
Q. That was even before the boat had arrived alongside or near the *SS. Victoria;* is that right?
A. Yes.
Q. And did they both speak to you?
A. Yes.
Q. And what was it that they said, and will you please identify which person said what? Do you understand that? I would like you to tell me what Mr. Bucovaz said to you—
A. Yes.
Q. And what Mr. Chiapperini said to you.
A. They told me that they wanted to call to the union.

Q. They both said that to you?
A. Yes.
Q. That they want to belong to the union?
A. Yes.
Q. Oh, call the union. I'm sorry.
A. They wanted, you know, to call the union.
Q. To call the union?
A. Speak to the union.
Q. And you said that they could not use the phone?
A. The phone.
Q. Is that right? And did they then leave?
A. Yes.
Q. And they went about their duties?
A. Yes.
Q. Now what time of the day was it when you were visited by two representatives from the engine department and two representatives from the stewards department?
A. I think it was about five o'clock.
[fol. 185] Q. And this was after the boat which is on Plaintiff's Exhibit 3 had left.
A. Yes.
Q. Where were you when they visited you?
A. In my quarters.
Q. And who were the people— Was it the same Mr. Bucovaz and Mr. Chiapperini of the engine room?
A. The other two people?
Q. No, no, no. Were Mr. Bucovaz and Mr. Chiapperini the two—two of the four people who visited you in your quarters?
A. They were Mr.—Mr. Bucovaz, Chiapperini and—
Q. Can you name the other two people?
A. Mr. Clarot.
Q. May we have that spelled, please?

(Witness wrote on pad.)

A. And the other—

Interpreter: C-l-a-r-o-t.

A. The other one—

Interpreter: I don't remember exactly now.

Q. And were Mr. Clarot and the other person whose name you now don't remember, representatives from the stewards department?

A. Yes. They said that.

Q. They said that. Well, did you know whether they were representatives of the— Did you know that they worked in the stewards department?

A. Yes.

Q. And as I understood your testimony, these four people asked for permission to get in touch with the union. Is that right?

A. Yes.

Q. Now what else was said at this meeting?

A. Pardon?

[fol. 186] Q. What else was said at this meeting, in your quarters?

A. Well, they said, they also said that if they couldn't get in touch with the union, they were willing to sail if the captain wrote a declaration where it was declared that they couldn't get in touch with the union.

Q. I don't quite understand that. They said to you—

A. They said, you know, we want to get in touch with the union because we want to get orders from the union. And I said to them, if you can't get in touch with the union, what are you going to do? And they said to me, it is enough for us to have a declaration from the captain where it is written that we haven't been able to get in touch with the union. After this declaration we are willing to leave.

Q. In other words, they said if you would write down on a piece of paper—

A. Yes.

Q. —that—

A. Pardon me.

Q. —they could not get in touch with the union, they would leave.

A. Yes.

Q. And then, as I understood your testimony, you said that you told them you had no authority to give them such a written note.

A. Yes.

Q. But you understood them to say that if you would put down in writing that they could not— that they were not permitted to get in touch with the union—with the union, they were ready to sail.

A. Yes.

Q. And you did not put that down in writing. Is that right?

A. Well, I—I didn't—after, you know, I did, you know. I put down, you know, in a paper, you know, the declaration. But they—

Q. That was later?

A. In the second time they didn't accept it.

Q. They did not accept it?

A. No.

[fol. 187] Q. All right. Now what happened after that?

A. In the meantime Mr. Berlingeri, President of the company, came on board. It was about—about seven, I think, six-thirty. He came with the Moran tug.

Q. Well, before that did I understand you to say that you called the company?

A. Yes, I called the company because I want—

Q. All right, now which company did you call? Did you call the Ineres Line?

A. I called the Ineres Line.

Q. And where did you call the Ineres Line?. Do you have their telephone number?

A. Yes, of course.

Q. Where are they located at?

A. They are located in Broadway, 39.

Q. Thirty-nine Broadway?

A. Thirty-nine Broadway.

Q. And is that the Ineres Steamship Company, Limited?

A. Ineres Line, you know, it's called.

Q. That's the name of your company, isn't it?

A. Ineres Line.

Q. Yes, that's the Ineres—you know the name of your company, don't you?

A. No. Ineres Line.

Q. And whom did you speak to?

A. I don't remember. Asked is Mr. Berlingeri there?

Q. Yes?

A. I don't remember if the girl on the phone told me Mr. Berlingeri is not here. He is on the way, you know, to the—to the *Victoria*.

Q. Now is it correct to say—you've been to New York on prior occasions, haven't you?

A. Pardon?

Q. You've been to New York on other occasions with the *Victoria*.

A. Oh yes.

[fol. 188] Q. And when you got to New York on other occasions with the *Victoria*, did you get in touch with someone of your employer at the 39 Broadway address?

A. No.

Mr. Stratton: Objection, irrelevant.

The Court: Overruled. Exception.

Q. Did you?

A. If I got in touch, you know, with the office.

Q. Yes.

A. Yes, I got in touch with the office.

Q. You have to; is that right?

A. Pardon?

Q. You say you had to?

A. I got in touch with the office.

Q. Yes. That's normal procedure; is that right?

A. Yes.

Q. And on other occasions with whom did you speak when you called the office at 39 Broadway?

A. I spoke, you know, with our agent, Mr. Wolfson.

Q. Did you report anything to him on those occasions concerning the voyage?

A. Well, I don't— Perhaps. Don't remember exactly what I said.

Q. Was it required of you to call Mr. Wolfson whenever you came into New York?

A. No.

Q. Did you ever in talking with Mr. Wolfson discuss incidents concerning the members of the crew, during the course of the voyage?

A. Well, generally no. No.

Q. Well, what were the things that you talked about?

A. Talk about—talk about the number of passengers who are coming on board, you know, and—well, things, you know, concerning, you know, the passengers.

Q. All right. And this time you tried to get Mr. Berlingeri at the same office.

A. Yes.

[fol. 189] Q. Had you been able to reach Mr. Berlingeri at this office on previous occasions?

A. Yes.

Q. Did you report to him at any time concerning the performance of the ship or concerning the activities of the crew?

A. Of course. He is the President of the line.

Q. You did?

A. Yes.

Q. Did you talk to him about disciplinary action that you may have taken against a member of the crew?

A. I didn't take any—any—

Q. I mean on some other occasion, not about—

A. No. No.

Q. Did you talk to him about promotions? In ratings?

A. Yes.

Q. On other occasions; is that right?

A. Yes.

Q. Did you talk to him about grievances that the members of the crew might have had during the course of a voyage?

A. Please?

Q. Did you talk—

A. (After interpreter spoke in Italian) No.

Q. Did you have any grievances in the course of other voyages?

A. No.

Q. Never had a grievance?

A. On my ship, no.

Q. All of your people were happy with their conditions of employment.

A. They were.

Q. No problems.

A. No problems.

Q. Never any question about overtime?

A. About overtime? We changed, you know, the overtime.

Q. You changed it?

A. Yes, about the overtime, you know, We—well, it is difficult to explain.

Q. Well, supposing you try to explain it.

(Witness spoke in Italian.)

Interpreter: Well, when we started—

Witness: When we left Genoa—

[fol. 190] Interpreter: We had a contract.

Witness: We had a contract about the overtime. That contract about the overtime was changed during the —during the voyage.

Q. It was changed by the company? Or by you?

A. By the company.

Q. And did any of the crew members object to the change?

A. No, because it was an improving.

Q. It was an improvement.

A. Yes, an improvement.

Mr. Ostrin: May I have this marked for identification, please?

(Paper was marked Defendant's Exhibit C for Identification.)

Q. By the way, Captain, on this ship the overtime that you just mentioned, did the members of the crew request the improvement of that change?

A. They didn't; I did.

Q. You did?

A. Yes.

Q. And they had not asked you about it before; did they?

A. No.

Q. Now I show you Defendant's Exhibit C for identification and I ask you what that paper is.

A. This is the crew roll and articles of agreement.

Mr. Stratton: I didn't hear that.

The Witness: This is the crew roll and articles of agreement by the Ineres Company.

Q. Is that the document that every crew member signs when he obtains employment?

A. Yes.

Q. On the Ineres Line?

A. Yes.

[fol. 191] Mr. Ostrin: I offer it in evidence.

The Witness: But that is not all the contract.

Q. We will get to the rest of it. Just be patient, Captain. I want to see the rest of the contract also.

Mr. Stratton: Your Honor, we will object to the admission of this Exhibit C in evidence, on the ground that it is immaterial and irrelevant. It is part of an inquiry into internal matters of a foreign flag ship.

The Court: Overruled.

(Defendant's Exhibit C for identification was marked in evidence.)

Q. This document that you have before you, Defendant's Exhibit C in evidence, says that the seamen shall embark at the Port of New York, is that right?

A. What article are you reading?

Q. Paragraph 1. Is that right?

A. This is the *Nassau*, not the *Victoria*.

Q. So far as the *Victoria* articles are concerned, do they also provide that the crew members shall embark at the Port of New York?

A. No. They have been engaged in Genoa. This girl here perhaps came to New York by plane and so she embarked in New York. That is the reason. She signed in Genoa the contract.

Q. Is it your testimony, Captain, that the crew members of the *Victoria*, when they sign articles, those articles do not say that they are to embark at the Port of New York?

A. If they come from Genoa by plane or by ship, and the ship is in New York, of course, they embark in New York.

[fol. 192] Q. Does that happen?

A. Very often.

Q. It happens very often when somebody is hired in Genoa while the ship is in New York, they either fly him over or they put him on the next ship and he then embarks at New York, is that right?

A. Of course, but they sign the contract in Genoa.

Q. Where was this contract signed, Captain? In Genoa?

A. In Genoa. It was signed by the Consulate of Liberia in Genoa.

Q. Captain, when a person, a member of your crew, quits his job in the Port of New York, does the company pay his transportation back to Genoa?

A. If they go, if they are discharged by the company, yes. If they go away by their own will, they pay by themselves.

Q. In other words, if the seaman quits of his own will, then he is required to pay his own transportation back to Italy, is that right?

A. Yes.

Q. And that is provided for in Paragraph 8 of these articles?

A. No, we never did. This article has never been applied.

Q. But it does provide, does it not, that where the member of the crew voluntarily quits, he quits of his own free will, that there is a deduction of his wages, and so on and so forth, is that right? That is what it says?

Mr. Stratton: I don't see the possible relevancy of this line of inquiry, in any event.

Mr. Ostrin: If you don't see it, I am sorry, sir.

You are claiming desertion here and this obviates it.

Mr. Stratton: May I be heard, Mr. Ostrin? This document speaks for itself.

The Court: Yes, on that basis I think the objection is well taken.

[fol. 193] Q. Captain, you have said that in all the years that you have been Master of the *Victoria* that you never applied the penalty that is provided for in Paragraph 8, is that right?

A. Never.

Q. But the penalty is there to be used if you want to apply it, isn't that right?

Mr. Stratton: Same objection.

The Court: Same ruling.

Q. Captain, is it a fact that the members of the crew of the *Victoria* also sign the same kind of ship's articles?

A. Yes.

Q. That is represented by Defendant's Exhibit C?

A. Yes.

Q. And the only difference would be the name of the ship, is that right?

A. Yes.

Q. You said, Captain, that there is also more than just these articles of agreement; is that right?

A. Yes, sir.

Q. Will you tell us about the other part of the agreement, Captain?

A. Well, that is very hard, and very long to explain, because it is a book.

Q. It is a book?

A. Yes.

Q. And when these people sign their articles, when they sign a paper represented by Defendant's Exhibit C, are they given a copy of this book that you refer to?

A. Not to every member, but the copy is on board. Every department has a copy.

Q. And do you have a copy of that agreement available, Captain?

A. Not here.

Mr. Ostrin: May I ask that the plaintiff produce a copy of the agreement, the supplemental agreement, or the agree-[fol. 194] ment to which reference is made in Defendant's Exhibit C in evidence?

Mr. Stratton: Your Honor, I don't believe we have a copy of that in court today and I don't see the relevancy.

The Court: At the next session we will have it here.

Mr. Ostrin: At the next session?

The Court: Yes.

Mr. Ostrin: Very well.

Q. Captain, your vessel goes from New York to some islands in the Caribbean, is that right?

A. Yes.

Q. Where does the cruise originate? Does it originate in the Caribbean or does it originate in New York?

A. What?

Q. Where does it start? Where does the voyage start?

A. From New York.

Q. Always from New York, Captain?

A. Well, it starts not always from New York, because we left also from Le Havre for another cruise.

Q. But on your regular normal cruise operation, Captain, is it a fact that the voyage starts at New York, goes to some island in the Caribbean, and then terminates in New York?

Mr. Stratton: I will object to that question as calling for a conclusion as to what the meaning of the word "normal" is, your Honor. If we can get the facts underlying it—

The Court: As a general rule?

Mr. Ostrin: As a general rule.

Q. Do you understand the question, Captain?

A. Yes.

[fol. 195] Q. What is your answer?

A. Just generally we start in New York and we come back to New York.

Q. So the voyage generally starts in New York and ends in New York, is that right?

A. Yes.

Q. Captain, assuming that one of your crew members wanted to leave the ship while in some Caribbean Island where your vessel is docked may he leave his job at that port in the Caribbean?

A. I don't know. That never happened.

Q. Let me ask you, you are the Master of this vessel. If a member of your crew wanted to leave his vessel, leave his employment while the vessel was docked at a Caribbean port, would he be allowed to do that?

A. It depends. Sometimes I would say yes, sometimes I would say no, because in our cruises the passenger pays for the cruise and when we do have a certain number of passengers we do need the whole crew to accomplish all the services and I can't allow the members of the crew

to leave the ship when I have a full ship and when I need all the crew.

Q. Under those circumstances would it be your policy then to say, in substance, wait until we get back to New York and then you can quit?

A. Yes.

Q. That is your answer?

A. But in certain cases I let people leave the ship not in New York. In Nassau, for instance.

Q. There would be times when you would let them quit the ship on their own free will in Nassau, right?

A. Pardon me?

Q. On certain occasions you would let them quit the ship in Nassau?

A. Yes.

Q. But in certain emergency situations you would say: "No, wait until we get back to New York and then you can quit."?

A. Of course.

[fol. 196] Q. So, as I understand it, Captain, your crew members can quit their vessel whenever they want to, either in a port in the Caribbean, with your permission, or in New York with or without your permission?

A. In New York also without my permission because they can leave the ship in the Caribbean with my permission.

Q. That is right. Let us get back to what happened on Tuesday of this week.

The Court: Before you do that, let us take a few minutes recess.

(Short recess.)

(After recess.)

Q. Captain, you said that after you indicated that you had no authority to sign the declaration that this delegation wanted you to sign you called the company's office and you were told that Mr. Berlingeri left for the ship; is that right?

A. Yes.

Q. Then you spoke with Mr. Berlingeri; is that right?

A. Yes.

Q. And, as I understand it, there was a meeting at which you, Mr. Berlingeri and the four crew members whom you mentioned were present; is that right?

A. Yes, sir.

Q. And at what time of the day was that, Captain?

A. It was, I think, about 7:00, a quarter past 7:00.

Q. And this meeting took place in your quarters?

A. In my quarters.

Q. And what was said at that meeting?

A. Pardon?

Q. What was said at that time?

The Court: By whom?

[fol. 197] Q. (Continuing) By you, by Mr. Berlingeri and by the delegation?

A. We discussed about the sailing of the ship and the declaration, and Mr. Berlingeri agreed to write this declaration, and also they asked to get in touch with the Union.

Q. They again asked to get in touch with the Union?

A. With the Union, and I told them: "If the Union didn't answer to your call what are you going to do?" And they said: "We are ready to sail."

Q. And then you allowed them to call the Union?

A. Yes.

Q. And they called the Union at about what time? 8:00 o'clock I think you said.

A. 8:00 o'clock.

Q. And they waited and they couldn't get anybody in?

A. Half an hour; no.

Q. And they couldn't get anybody in?

A. No.

Q. And then I think you said you gave them permission to get off the ship early the following morning?

A. No, no. No, I told them after when they couldn't get the answer from the Union, I told them: "Now you must accomplish your promise, please." They said: "No. We ask permission to get in touch with the entire crew."

Q. I see; I stand corrected. And then there was a meeting with the entire crew?

A. A meeting with the entire crew.

Q. And you were not present at this meeting; were you?
A. No.
Q. And did you receive a report about this meeting?
A. Yes, at 9:00 o'clock.
Q. And from whom did you receive the report?
A. The same four people.
Q. And they told you that the crew refused to sail?
A. Yes.

[fol. 198] Q. And then later that evening I think you said you were visited by some people from the Stewards Department?
A. From the Stewards Department.
Q. And how many people from the Stewards Department visited you?
A. About eight or ten.
Q. And all together how many people are there in the Stewards Department?
A. There are 200.
Q. 200?
A. Yes.
Q. In the Stewards Department?
A. Yes, steward and kitchen department all together.
Q. And eight or ten visited you?
A. Yes.
Q. And who was the spokesman?
A. Pardon?
Q. Who spoke of the eight or ten people?
A. All of them.
Q. They all at the same time?
A. Well, not at the same time, one after another.
Q. Can you give me the names of the people who were in this delegation of eight?
A. No, I don't remember.
Q. You don't remember any of them?
A. I don't remember.
Q. Could you point them out if you were to see them?
A. Well, perhaps a few of them, yes.
Q. And they told you—what did they tell you?
A. They told me that the two delegates, the two representatives didn't represent anyone but only themselves, and so after this declaration in accordance with Mr. Berlin-

geri having decided it, to assemble all the stewards department.

Q. They said that the two who had spoken to you did not represent the entire stewards department?

A. Yes.

Q. But only themselves?

A. Yes.

Q. Did these particular people say that they represented the entire stewards department?

A. No, they didn't say that.

[fol. 199] Q. They were speaking for themselves; right?

A. Yes.

Q. Eight out of about 50 or 200, is that right?

A. Yes.

Q. And they said that they wanted to sail?

A. Yes, sir.

Q. After that you said you called a meeting of the entire crew?

A. Of the stewards department.

Q. Of the entire stewards department?

A. In the dining room.

Q. In the dining room, and were you present?

A. Yes.

Q. And will you tell us what was said to this entire group?

A. I said if the two people who came before represented the stewards department. The majority said no.

Q. How much of the majority, how many said no and how many said yes, do you know?

A. Well, I can't tell you, but the majority of them signed the declaration they wanted to leave and they didn't want to join the strike.

Q. You had a signed declaration from them?

A. They signed.

Q. Was it already signed when you got there?

A. Only about ten people, ten or twelve people didn't sign.

Q. Only about ten or twelve of the 200 or so?

A. About; it was not exactly.

Q. And they said they wanted to sail?

A. Yes.

Q. And do you have that declaration here?

A. No, I haven't.

Q. Where is that declaration at the present time, do you know?

A. I don't know.

Q. You knew you were going to be in court today, didn't you?

A. Pardon?

[fol. 200] Q. You knew that you were going to be in court today, did you not?

A. Yes.

Q. And didn't you think it would be important to produce this signed declaration by so many people in your stewards department who wanted to sail on Tuesday night?

A. The president of the Line, I think, has the declaration. He was present when they signed it.

Q. The president of the Line?

A. Yes.

Q. That is Mr. Berlingeri?

A. Yes.

Q. Do you know that Mr. Berlingeri has already testified in this case? Do you not?

A. Yes.

Q. Did you turn this declaration over to Mr. Berlingeri?

A. Well, they signed it. I never had the declaration in my hands.

Q. Did you ever see the declaration?

A. Pardon?

Q. Did you ever see the declaration?

A. Yes, I saw the declaration.

Q. You saw it right there?

A. Yes.

Q. And they said that they were ready to sail; right?

A. Yes.

Q. What happened after that?

A. After that we talked about it with the Chief Engineer, with Mr. Berlingeri and with myself, and we decided to call again all the members of the engine department.

Q. And how many members of the engine department did you call?

A. All. All of them.

Q. How many would that be?

A. There are about 30, 31.

Q. And you called them all together and what did you say?

A. No, not all together. In the officers mess room.

Q. And what did you say?

A. And we told them the situation and we said the ship [fol. 201] is kept here only by you; the others, the deck department, the stewards department, want to leave, want to sail. And they said, "We don't sail."

Q. And what happened after that?

A. After that they said: "We would like to get in touch with the Union."

I said: "All right, tomorrow morning as soon as possible go ashore and get in touch with the Union and let me know as soon as possible your intentions."

Q. And then you arranged for a water taxi?

A. Yes, a taxi boat came.

Q. At what time?

A. Half past 6:00 in the morning.

Q. In the morning?

A. Yes.

Q. And who were on this taxi boat, do you know?

A. I don't know.

Q. Who went on this taxi boat?

A. Six of them.

Q. Was Mr.—

A. Bucovaz and the other five.

Q. Was Mr. Chiapperini on there?

A. No, Chiapperini was on board.

Q. Was Mr. Clarot on there?

A. No, only six from the engine department.

Q. Did you make a notation in writing as to the men who went on this taxi at 6:00 o'clock or 6:30 in the morning?

A. Yes, I have it on board but I haven't it here.

Q. You have it written down but you don't have it here. Will you produce that, please?

A. I think so. The officer on the gangway, perhaps he got the record.

Mr. Ostrin: May I ask that on the next session counsel produce the written memorandum containing the names of the persons who boarded this taxi boat?

[fol. 202] Mr. Stratton: We will do it if we can find it.

Q. And when did the boat return?

A. They didn't return.

Q. When did they call you?

A. They called at about half past 9:00.

Q. Who called you?

A. Mr. Bucovaz.

Q. What did he say?

A. He didn't call me, he called the radio operator. The radio operator told me Mr. Bucovaz wants to speak to Mr. Chiapperini and I said, all right, get permission for him to call Mr. Chiapperini.

Q. Who is Mr. Chiapperini?

A. Mr. Chiapperini is the other member of the engine department.

Q. Did you listen in on the conversation?

A. Yes.

Q. Was this on a loud speaker?

A. Yes.

Q. And you picked up a phone, is that what you did?

A. After. Before I left Bucovaz talked with Chiapperini.

Q. Did you hear Bucovaz's conversation with Chiapperini?

A. Yes.

Q. What was said?

A. Well, he said, we don't sail. He confirmed the order not to sail.

Q. Then what else happened? Did you hear anything else?

A. Then I spoke to Bucovaz.

Q. Did you hear them say to Chiapperini: "We asked the Union and the Union said that we could not sail"? You didn't hear that said, did you?

A. No, I didn't hear that. I can't tell it exactly, you know.

Q. Then you cut in and asked Mr. Bucovaz a question; right?

A. Yes, sir.

Q. And what was the question that you asked Mr. Bucovaz?

A. I said, "Did you get orders from the Union not to sail?"

[fol. 203] Q. What did he say?

A. He said, "No. We decided not to sail; not the union." And also he said that the union let us decide what to do.

Q. And did Mr. Bucovaz later return to the ship?

A. He came in the afternoon, I think.

Q. Did all eight return to the ship, or six?

A. Well, I think they all came back in the afternoon.

Q. Did the crew perform its duties on the vessel?

A. Yes.

Q. On Wednesday of this week?

A. Yes.

Q. Are they performing their duties on the vessel or did they perform their duties on the vessel on Thursday of this week?

A. Yes.

Q. And are they performing their duties on the veseel now?

A. Yes.

Q. Captain, did you receive a telephone call?

The Court: If the crew was performing its duties aboard the vessel, why didn't you sail?

The Witness: Because they refused to move the engines.

The Court: So they are not performing their duties there?

The Witness: Well, they are on duty in the engine room. They keep the lines, they keep the water running, the kitchen is working, they do all the duties on board, but running the engines.

The Court: Except to run the engines?

The Witness: Yes. They obey every order but moving the engines.

Q. Are there passengers aboard the ship now?

A. Pardon?

Q. Are there passengers aboard the ship now?

A. No.

[fol. 204] Q. Did you receive a communication from the Italian Consul some day this week?

A. Yes, through the office.

Q. When was it that you received this communication?

A. About twelve o'clock, I think.

Q. On what day?

A. On Wednesday.

Q. And did you talk to the Consul?

A. No, no, I talked with somebody at the office.

Q. Did you know what he wanted?

A. They said: "We had a complaint from the Italian Consulate that you don't give permission to your crew to go ashore."

And I answered it with one word, "It's a lie, they have permission to go ashore, and to demonstrate to you, they went ashore this morning at 6:30."

Q. And they go and they come?

A. Yes. And they have to hire a boat for four hours a day, just to send these people ashore.

Q. Did they go ashore before Wednesday, before you got this call from the Consul?

A. Yes, they went. They went in the morning, but I have orders to be on board two hours before sailing.

Mr. Ostrin: I have no further questions.

(Witness excused.)

Mr. Stratton: The plaintiff calls Mr. Anderson.

The Court: Gentlemen, let us see if we can agree on a modus operandi. Do you think you can finish this afternoon?

Mr. McAllister: Your Honor, we would like to proceed with as much as we possibly can, because we have witnesses who would sail as soon as they could, as soon as this strike [fol. 205] was ended. The strike is holding the ships in port.

The Court: I don't think that the strike would be ended at the end of this hearing today.

Mr. McAllister: Certainly, I don't know, but if the strike would end, then the ships would be free to continue.

The Court: I don't think that you have a few days of testimony.

Mr. Stratton: We have witnesses.

Mr. McAllister: What kind of a schedule may we have? We have witnesses here. We would like to go forward with a few of them if we can and finish this particular episode. The rest of our witnesses I don't think will take too long. Perhaps the cross won't be quite so long.

The next witness is to be Mr. Anderson, and we will take up this *U. M. D. 2* incident. I don't know that the cross examination would be extended.

Mr. Ostrin: I don't know, your Honor, and I certainly don't want to be limited in cross examination.

The Court: I don't mind spending another hour, but so far as I am concerned, you are not going to gain anything.

Mr. Ostrin: These people are all available.

Mr. McAllister: May we proceed on Monday?

The Court: Yes, in Special Term, Part II, Room 321, at 9:30.

Mr. Stratton: Would your Honor want to hear any more testimony this afternoon?

[fol. 206] The Court: After what happened yesterday and this morning I am a little tired.

(Court thereupon adjourned to Monday, May 23, 1960, at 9:30 o'clock A.M., in Room 321.)

New York, N.Y. Monday, May 23, 1960, 9:30 A.M.

TRIAL CONTINUED

Appearances: (Same as heretofore)

Mr. Stratton: The plaintiff calls Mr. Andersson.

HELGE OSWELD ANDERSSON, residing at 4901 8th Avenue, Brooklyn, New York, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Stratton:

Q. Mr. Andersson, where do you live?

A. I live in 4901 8th Avenue, Brooklyn.

Q. By whom are you employed, Mr. Andersson?

A. My regular employer is United Marine Division AFofL, C.I.O. Local 333.

Q. AFofL, C.I.O., Local 333, is that a part the International Maritime Union?

A. No, sir.

Q. And what do you do for the United Maritime Division?

A. I run the motorboat.

Q. And is this the motorboat that you run for them, showing you Plaintiff's Exhibit 3 (handing to witness)?

A. Yes.

[fol. 207] Q. *U.M.D. 2*?

A. The *U.M.D. 2*, that is right.

Q. And were you running that boat Tuesday, May 17th?

A. Yes.

Q. And what did you do on that boat on that day?

A. On that day?

Q. Yes.

A. The whole day?

Q. Yes. Give us the whole day.

A. Well, in the morning I went up to Pier 42 about 8:00 o'clock.

Q. Pier 42 is where the *Nassau* is docked?

A. Yes.

Q. What did you do?

A. When I came up there I got orders to go back to Pier 11.

Q. Who gave you those orders?

A. That was one of the pickets that I had aboard the boat before.

Q. What?

A. The picket.
Q. One of the pickets?
A. Yes.
Q. What is the picket's name?
A. Well, his name was David, as far as I know.
Q. David?
A. Yes.
Q. Was he a member of the International Maritime Workers Union?
A. That I couldn't tell you.
Q. Was he picketing on behalf of the International Maritime Workers Union?
A. He had a picket sign on him when he was aboard the boat, yes.
Q. Do you remember what the picket sign said?
A. Some of it I think. "We want a contract," or something like that.
Q. And was he picketing the *Nassau?*
A. No.
Q. Where was he standing?
A. He was on the after deck behind the cabin.
Q. On the after deck, was it?
A. Of the boat.
Q. What time was this?
A. What time?
[fol. 208] Q. Yes.
A. It was Tuesday. Let's see. This was about from 8:00—Tuesday we didn't do no picketing.
Q. Tuesday you didn't do any picketing?
A. No.
Q. When did you see this man who told you to go back to Pier 11?
A. That was the day he had been aboard Monday. He would have been aboard Monday.
Q. He had been on your boat Monday?
A. Monday, yes.
Q. And where did you see him on Tuesday?
A. On Tuesday he was at the bulkhead.
Q. Where?
A. At the bulkhead.
Q. The bulkhead of what?

A. Of the north side of 42.
Q. The north side of 42?
A. Pier 42.
Q. That is where the Nassau was?
A. Yes.
Q. And what did he tell you to do?
A. He told me to go back to Pier 11 and stand by.
Q. And to stand by?
A. Yes.
Q. And what did you do?
A. I stood by there all day. I washed down the boat and cleaned up.
Q. And then what did you do?
A. Then those fellows came down around 3:00 o'clock.
Q. What fellows were those?
A. I don't see them.
Q. Do you know their names?
A. I only know one, one guy's name.
Q. What is his name?
A. Andy.
Q. Andy what?
A. That's all I know.
Q. Did you know Andy?
A. I know Andy from Pier 42, yes.
Q. What is his job?
A. His job, I believe, is picket captain. I am not sure, but I believe that,
Q. He is the picket captain?
A. Yes.
[fol. 209] Q. For the I. M. W. U.?
A. Yes.
Q. And what did Andy do when you next saw him, as you say, about 3:00 o'clock?
A. Well, he came down with them other four men.
Q. He came down with how many men?
A. Four men.
Q. His name was Andy or Angie?
A. Andy, I believe.
Q. Andy?
A. Andy, yes.
Q. Will you give us a description of Andy or Angie?

A. Well, he is a colored man.
Q. Have you seen him in court today?
A. No.

Mr. Ostrin: May it please the Court, I am going to object to this line of inquiry. To this date and as of this time, your Honor, whatever evidence has been offered has been offered after the picketing ceased. There has not been any evidence whatsoever of purported or alleged unlawful, violent picketing of any kind whatsoever prior to the issuance of the temporary restraining order.

All of this testimony thus far, including that of this witness as of now, relates to matters occurring after the issuance of the temporary restraining order. I don't see, and I am not aware of any motion to punish for contempt. I am not aware of any claim that there has been any violation of the temporary restraining order, and I submit to your Honor that for the plaintiff to prevail on a motion for a temporary injunction it must establish some sort of unlawful conduct prior to the issuance of the temporary restraining order. Now, that has not been done here.

[fol. 210] The Court: We will see what develops. Overruled. I will give you an exception.

Q. About how old is Andy?
A. Oh, he is coming there now.

(A man enters the court room.)

Q. That is Andy?
A. Yes.

Mr. Stratton: The person known as Andy will you concede that he is connected with the International Maritime Workers Union?

Mr. Ostrin: I will concede he is an employee of the Union, that he is an official.

Mr. Stratton: May we have his full name?

Mr. Ostrin: His name is Rene Lioanjie.

Q. That is the person you described as Andy, is that correct?
A. Sir?
Q. That is the person you have been referring to as Andy?

A. Yes.

Q. What did Andy do when you saw him at Pier 11 on Tuesday afternoon? You said he came with four men?

A. Yes.

Q. Did you notice who those four men were?

A. Well, I may have seen them at 42.

Q. You may have seen them or did see them at Pier 42?

A. Yes.

Q. You say you had seen them enter Pier 42?

A. I may have seen them up at Pier 42.

Q. But you don't know their names?

A. No, sir.

Q. And then what did Andy do?

A. He didn't do any particular thing more than them four guys came down on the boat. Andy said he wanted to go down to the *Victoria*.

[fol. 211] Q. Then what happened?

A. Then we took the loud speakers from the other boat and changed it on my boat.

Q. Yes.

A. And then we went down to the *Victoria*.

Q. Who went down to the *Victoria* with you?

A. The four men.

Q. Did Andy go to the *Victoria* with you?

A. No.

Q. Did Andy give you instructions as to where to go?

A. Not what I remember.

Q. But he told you to take these four men to the *Victoria*?

A. Yes.

Q. And then what did you do?

A. I went down to the *Victoria* with those four men.

Q. Was there any conversation on the way out to the *Victoria*?

A. No, not that I can remember. I was busy steering the boat.

Q. Did you hear any conversation? Were the four men carrying any picket signs?

A. No.

Q. Did they have any signs or placards at all?

A. Not at all.

Q. What did you do when you got out to the *Victoria*?

A. I laid off about five, six hundred feet and Andy started to talk in the loud speaker microphone.

Q. And what did they say on the loud speaker?

A. Oh, I couldn't understand that. That was in a foreign language.

Q. Did they say anything in English?

A. Not that I know of.

Q. You didn't hear them say anything in English?

A. I didn't hear that because I was under the machine, it was making noise.

Q. You say lay off the *Victoria*?

A. About five or six hundred foot.

[fol. 212] Q. Did you see the sailors of the *Victoria* watching your launch?

A. I seen the crew on the *Victoria* by the rail, yes.

Q. Was the loud speaker talking to the crew on the *Victoria*?

A. Yes.

Q. Then what happened?

Mr. Ostrin: If your Honor please, I move to strike the answer of the witness. He testified he did not know what the people on the boat was saying.

The Court: Strike it out.

Mr. Stratton: No further questions.

Cross examination.

By Mr. Ostrin:

Q. Mr. Andersson, on Tuesday afternoon when you went to the *Victoria* did your boat have a picket sign on it?

A. No.

Q. You say there were four men in the boat?

A. Yes.

Q. And Andy was not on the boat?

A. No.

Q. And you don't know what these people said when they got to the *Victoria*, do you?

A. No, I don't.

Q. Did they speak in English at all?

A. Not what I can remember.

Q. Did these men tell you where they were from?

A. No.

Q. You are sure that none of them carried any picket signs of any kind whatsoever?

A. No picket signs at all, no.

Q. How long did you stay by the *Victoria?*

A. I'll say from half an hour to forty-five minutes.

Q. Then after you had been there about 35 or 40 minutes, as you say, you went back to shore?

A. He asked me to take them to the pier, the south [fol. 213] side of 4 and 5 Staten Island. He went to make a telephone call.

Q. You didn't notice anybody leave the *Victoria;* did you?

A. No, sir.

Mr. Ostrin: That is all.

The Court: This Local 333 is a local of what Union?

The Witness: That is the United Marine Division of AFofL, CIO, Local 333. This boat was rented to this other Union.

The Court: That is all.

(Witness excused.)

Mr. Ostrin: At this point, if your Honor please, I move to strike the entire testimony of this witness on the grounds that the events to which he has testified took place after the issuance of the temporary restraining order.

The Court: Motion denied; exception.

Call your next witness.

Paolo Vagliasindi, residing on board the Steamship *Nassau*, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Stratton:

Q. Captain, you have previously testified that you were the Captain of the S/S *Nassau?*

A. Yes, I did.

Q. And where is the S/S *Nassau* now?
A. Pier 42, north side.
Q. North River?
A. Yes, North River.
Q. And how long has it been there?
A. Since Friday the 13th.
[fol. 214] Q. Friday, you say?
A. Friday the 13th.
Q. And where had she come from?
A. From Nassau.
Q. From Nassau?
A. Yes.
Q. Did she have passengers on board?
A. Yes, she had.
Q. And will you tell us what happened to those passengers?
A. They disembarked.
Q. At what time?
A. About 10:00 o'clock because we docked 9:00 o'clock, a quarter to 9:00, and they disembarked about 10:00 o'clock after the Customs and Immigration were through.
Q. Were you scheduled to sail again?
A. 6:00 o'clock in the afternoon.
Q. The same day?
A. The same day, yes.
Q. Were you going to take passengers?
A. Yes, about 350.
Q. About 350?
A. Yes.
Q. And where were you scheduled to sail to, Captain?
A. To Nassau.
Q. Did the Masters come on board?
A. Yes; they did.
Q. Captain, when was the first time you saw a representative of the International Maritime Workers Union?
A. I met one representative, I mean before, many times on board. On the little deck about 11:00 o'clock, a quarter to 12:00, 12:00 o'clock; I don't remember exactly the hour.
Q. I don't mean this Friday, but when was the first time you ever saw a representative?
A. About two months ago.

Q. Will you tell us what happened on that occasion?

A. They came on board just because there were some crew members who refused to embark the provisions as [fol. 215] usual from the kitchen and from the dining room. They usually embarked the provisions and since they complained that they did have some pay for some hours in Genoa, because they loaded some cargo there one Sunday before leaving from Genoa, they didn't want to work before they had their payment of these hours.

Q. What did these representatives say to you then?

A. No. I held after that there were some representatives of the union on board and they came to me because I asked them on what duty and to ask them to call on me and they came in my quarters.

Q. Will you confine your testimony to what they said to you and what you said to them?

A. They said they would embark, just to speak with some people on board, with the crew members, because they were an international union; they take care of the crew members of the ships, and I told them, "Please, you can't do that if you don't have special permission from the Line. There is nothing that you can come aboard for. I will be very glad to have you come aboard, but I shall have to have special permission from the Line. I can't allow you to come aboard and, please, you ask the Line to give this permission."

And they thanked me and went away.

Q. Do you know the name of any of those men?

A. No, I don't. They told me the name. I see one of them over here. The seamen many times, they went away, but I can't remember the names now.

(The witness identifies a man in the courtroom.)

The Court: Identify that person.

[fol. 216] Mr. Ostrin: That is the same person, your Honor. May the record indicate the identification is of Mr. Lioanjie.

Q. And when was the next time that you saw representatives of the International Maritime Workers Union?

A. About every Friday. Now I can't remember exactly

the dates, but every Friday we came in port, they came on board, and every time they were accompanied by the officers to my quarters, and they had conversations and they told me that they will speak with the president of the Line, Mr. Berlingeri, if this was possible.

Q. Did they request permission to see the president of the line?

A. No, they didn't.

Q. What did they say about Mr. Berlingeri?

A. They tried to get in touch with him and they really did at last, I think, fifteen days ago in my presence. They did meet with Mr. Berlingeri, because I asked Mr. Berlingeri—no, no, then they met Mr. Berlingeri. It was when I had to disembark one crew member. He was sick. I didn't want to disembark this crew member, because my doctor, the doctor for our insurance here in New York, didn't say he was so sick to disembark. So I told him, "You don't disembark because the doctor says you are not sick to disembark."

At that time one of the representatives, I don't remember if it was him or another one, they came on board just to defend the right of this crew member to disembark, and I told them, "Please, you can't interfere with my Captain's job. I have the doctor on board. I have the insurance doctor. He said he is not so sick to disembark, so he will remain on board. But, anyway, if you will do something for him, you must ask the president of the Line." And [fol. 217] they did. I gave them the number of the Line's telephone.

They 'phoned to the president of the Line and the president of the Line called me and told me, "You leave this man do what he likes to do, and you send him with the union representatives and with our land agent." And I did.

And this man didn't come on board because I don't know what happened after, but he was sent to Italy. I don't know why.

Q. Was there another incident relating to a stewardess on board the *Nassau*?

A. Yes, the next week.

Q. Tell us your conversation with the union at that time?

A. The next week there was one stewardess I had to

disembark for indiscipline. And they came on board to me and asked me very kindly, "Captain, may we know the reasons for the stewardess's disembarkment?"

I told them "If I speak like a prince I can tell you something, but like a Captain, I have not to tell anybody what I do on board. This stewardess is already twenty days continuously making indiscipline on board. I can't take care of the boat." And I told them too, "She must be very grateful to the president of the Line who disembarked her and gave her the money to come back to Italy, because generally when somebody is disembarked for indiscipline, she must pay the voyage back to Italy. It is our contract."

And on that occasion these people met with the President of the Line, who was on board at the time, and he told me, "Please, I would like to speak with them." And we met together in Suite B, an apartment there, and we had quite a long speech, about half an hour.

[fol. 218] Q. These incidents were all before Friday, May 13th, were they not?

A. Before, yes, sir.

Q. Now, will you tell us about Friday, May 13th, after you disembarked the passengers that you brought back from Nassau? What happened?

A. Well, there was really a very heavy atmosphere on board. I couldn't understand exactly. And about 11:00 o'clock, 11:30, the purser called me and told me that some crew members refused to disembark the provisions on board like usual, you see. And after that the Chief Steward came to me and told me, "They say they are afraid of the longshoremen on strike, because there were already the pickets on the pier. So they stayed not to work, not for some reason, but because we are afraid the longshoremen were on the pier and were on strike and may do some harm, but if you agree with them, they are willing to work at noon.

Q. Did you go out on the bridge or on the pier?

A. What?

Q. Did you go out on your bridge and look at the pier?

A. No, I don't remember. Maybe yes, because I go many times on the bridge.

Q. And did you see the picket line?

A. Oh, yes.

Q. Will you tell us what you saw?

A. I see some men with some written sign on the back and on the front of the body, walking around outside the pier.

Q. Outside Pier 42?

A. Yes.

Q. Did you see what the signs said?

A. No, it was impossible from—I could with the glasses, but I didn't, though I saw "Steamship Nassau."

Q. You say "Steamship Nassau" on the sign?

A. Yes.

[fol. 219] Q. Were the members of the crew picketing?

A. No.

Q. They were not?

A. No.

Q. What happened next, Captain?

A. Next after that, generally from 12:00 o'clock until 4:00 o'clock—4:00 o'clock is the hour we start embarking our passengers. We leave the men free and they went ashore. Before this I met this union representative, and we were quite friendly, you see, because I met him every Friday, I asked him, "What's the matter this morning? Why this strike of longshoremen, because they interrupt to embark the cargo, because we start about 9:30 to embark cargo, and 10:00 o'clock it was over."

The Court: What day was this?

The Witness: This day, the 13th, which is Friday, the 13th, because the longshoremen—

Q. You say at 10:00 o'clock it was over. What do you mean by that? Was all the cargo loaded?

A. No. It was ordered work, because they refused to go on with the work. We had to embark about 70 tons of cargo. We embarked only about two tons of frozen food and about ten tons of general cargo, and after they refused to go on with the embarking of the cargo because of the pickets.

Q. I think that is 17 tons of cargo?

A. Seventeen. We had to embark 17 tons.

Q. And you got 12 tons on board?

A. Yes.
Q. And they refused to load more?
A. They refused to load more, yes.
Q. What happened next?
A. Four o'clock everybody—I asked, "What's the matter." He answered me: "Don't worry, Captain. Everybody will work quiet on board."

[fol. 220] Mr. Ostrin: "Don't worry, Captain"?
The Witness: "Don't worry, Captain. Everybody will do his job."
Mr. Ostrin: Who said that?
The Witness: The union representative.
Mr. Ostrin: Did you know who he was?
The Witness: Yes; if I saw him I could recognize him, but I don't see him here.

Q. Is he in the courtroom now? Do you see him?
A. No, in the court I don't see him.

By Mr. Stratton:

Q. What else did he say? Did he say anything more?
A. No.
Q. Is that the end of the conversation?
A. Yes.
Q. What happened in the afternoon then?
A. In the afternoon a few people from our kitchen embarked. The Chief Steward, the Head Chief Steward, and somebody else, embarked the provisions, the supplies, the food supplies, but they didn't ask the crew members from the dining-room to do that too, because they were very afraid.

Mr. Ostrin: I object to that, that they didn't ask. I think it is hearsay.
The Court: Try to find out what was said.

Q. Captain, who was it that would not help the Chief Steward, do you know?
A. The men of the morning. I told them in the morning but some people refused to embark the supplies, because they were afraid of the longshoremen that were on strike.

So the Chief Steward didn't ask more of them to help him, but he embarked the provisions. He, his assistant, and the other two men helped them.

[fol. 221] Q. They embarked the provisions themselves?

A. Yes.

Q. Then what happened?

A. 4:00 o'clock everybody came back on board.

Q. By everybody you mean the crew?

A. Everybody from the crew, yes, who were on leave for three or four hours.

Q. Did they have a right to be ashore to 4:00 o'clock?

A. Yes.

Q. But then they were required to come back on the ship?

A. 4:00 o'clock, because we started to embark passengers. So they are required to come back 4:00 o'clock.

Q. And then they are not permitted to go ashore again after 4:00 o'clock?

A. After 4:00 o'clock, no, except with some special permission, you know, but nobody asked me for permission and nobody went ashore till the strike was spread.

Q. Tell us from 4:00 o'clock on what happened?

A. From 4:00 o'clock to 5:00 o'clock everybody did his duty.

Q. And what happened?

A. The passengers came on board. They helped the passengers to go in their cabins, to find the cabins, to carry the baggage, because the passengers carried the baggage from the end of the pier on board because the longshoremen were on strike and, the porters, too, because they were obliged to carry their baggage to the ship.

Q. The longshoremen and porters did not bring the baggage on board the ship, is that right?

A. No. The longshoremen usually take the baggage on board but this day they didn't, so the passengers brought their baggage on board. On board are sailors or waiters who help them to bring the baggage in the cabins.

[fol. 222] Q. And that is what happened between 4:00 and 5:00 o'clock?

A. Nothing.

Q. That is what happened, what you just told us?

A. Yes, from 4:00 o'clock to 5:00 o'clock everything was smooth.

Q. And what happened 5:00 o'clock?

A. 5:00 o'clock I was just near the Chief Purser's desk, because I had to phone to Mr. Wolfson that everything was going well so far and the ship's purser came to me and told me: "Captain, all the stewards department is going ashore. All the members of the stewards department are going ashore."

Q. Then what did you do?

A. So I rushed with the Chief Purser on the deck and I went ashore through the gangway. There were already about 100 people ashore.

Q. 100 of your crew?

A. Of my crew, yes, just near the gangway.

Q. How many men were in your crew all told?

A. 208.

Q. And when they went ashore was that by your order?

A. Of course it is by a special order that they can go ashore.

Q. Then what did you do?

A. I came ashore and just asked them to come back on board because I told them Mr. Berlingeri promised that he will be here next Friday to sail with us and to stay all the cruise along with us just to hear what you want and to get in contact with every one of you that wants to speak with him just to reach an agreement, but in the meanwhile somebody from the men were there and started to scream: "We don't want to speak with Mr. Berlingeri. We don't want more promises. We want facts and the fact is we have strong Unions now."

[fol. 223] Mr. Ostrin: What is that?

The Witness: "We have too many promises they didn't maintain. How we want all the facts and these facts we will have through the Union. We don't want to speak to you, Captain. We are sorry for you but we won't speak with you." And they rushed away from the pier, to the end of the pier.

Q. And did they come back on board?

A. No, they didn't.

Q. And then what happened, Captain? Did you go back on board?

A. Yes, I did go back on board and I went there just to phone to the company. I did come back on board and after this telephone call I went all around the ship and there was somebody still on board. They were all going ashore because I heard that somebody from my crew members and somebody from the Unions were on board just to convince everybody to leave the ship.

Q. And how many of the crew stayed?

Mr. Ostrin: You say you heard some of the Union members?

The Witness: Yes, I heard. I didn't see them.

Mr. Ostrin: I move that be stricken.

The Court: Strike it out.

Q. And how many crew men remained on board?

A. Well, I made this tour and there were about 50 on board. Some just watched, some were just going around.

Q. What about your crew?

A. They left during this few minutes I was downstairs to phone.

[fol. 224] Q. And what happened at that time, Captain?

A. 6:00 o'clock we couldn't leave because we had no more sufficient crew on board.

Q. 6:00 o'clock was your scheduled hour to leave?

A. 6:00 o'clock was our scheduled time to leave.

Q. And were you all ready to sail?

A. Yes.

Q. And other than the fact that the crew was not aboard?

A. Yes.

Q. And what happened then?

A. Next I phoned to the president of the Line—I am sorry, the president of the Line was not in New York, he was on board the *Victoria*—Mr. Wolfson.

Q. I don't want that telephone conversation. Were the passengers still on board?

A. The passengers were on board, and since the passengers were still on board I asked the Union representative to convince some crew members to come back on board just

to feed these passengers because 7:00 o'clock was supposed to be the first sitting dinner.

Q. Did they come back on board to feed the passengers?

A. No, they didn't.

Q. And what happened to the passengers?

A. 8:00 o'clock I told them I am sorry, I can't serve dinner because we have no crew members on board. So I allowed them to go ashore and have some sandwiches because I delayed the departure till 10:00 o'clock. If an agreement will be reached at that time between the Agency and the representatives of the Unions, because they were in contact already, I delayed it.

Q. And did the passengers go ashore?

A. Yes, many of them and they came back at 10:00 o'clock.

Q. Did they spend the night on the boat?

A. Yes. At midnight, when there was a meeting—I [fol. 225] wasn't present—between our president of the Agency and Mr. Wolfson and the Union representatives.

Q. I am not inquiring about that. You were not present Captain?

A. No, I was not.

Q. How long did the passengers stay on board?

A. When I told them that the cruise was cancelled, about midnight.

Q. You told them at midnight?

A. At midnight I told them the cruise was cancelled but they were allowed to remain on board for the night and go ashore the day after. And some did, about 70 of them.

Q. And the cruise had been in fact cancelled, had it not?

A. What?

Q. The cruise had been cancelled, hadn't it?

A. Yes.

Q. And you told the passengers their passage money would be refunded?

A. Yes, sir.

Q. Had their passage money been refused?

A. Well, it was the Agency's job. I think in the same night somebody had been refunded; I don't know.

Q. Captain, are any of the crew members aboard your ship now?

A. On board my ship?

Q. Yes.

A. Yes. They usually come on board to sleep, to wash, to change, but they don't eat on board. They come and go. I don't forbid them to come on board.

Q. And is food available for them if they will cook it?

A. Yes. I told them many times, I asked the representative of the crew, I asked them many times to come back on board to have food on board and they told me: "Wait until we ask everybody." They went ashore and they said they [fol. 226] didn't want to come back on board to have dinner and lunch.

Q. So they ate ashore by choice?

A. Yes, they ate ashore.

Mr. Stratton: No further questions.

Cross examination.

By Mr. Ostrin:

Q. Captain, you said that you met representatives of the International Maritime Workers Union sometime before May 13th?

A. Yes, I did.

Q. And one of the men whom you met was Mr. Lioanjie?

A. Yes.

Q. You pointed him out?

A. Yes.

Q. Did you meet the man who sits alongside of him?

A. I couldn't say yes. I didn't notice so far as seeing him.

Q. This was about how many weeks before May 13th, Captain?

A. How many weeks?

Q. Yes.

A. About two months.

Q. About two months?

A. Yes.

Q. And the first time that you saw them was in connection with what particular incident, do you recall?

A. It was at the same time they were aboard for some claim from the boys from the kitchen.

Q. It was a claim for overtime?

A. No, no, they didn't want to embark as usual the provisions, the supplies, because they were saying that the line has not maintained the promises given them in Genoa before leaving.

Q. The promises as to what?

A: In Genoa they had two days work they were not supposed to do but since we were in quite a hurry before leaving they offered themselves to work to embark some provisions, to paint something.

[fol. 227] Q. You say some of the men in the kitchen complained because they did more work in Genoa than they were supposed to do?

A. No, because they did willingly this work but they were supposed to be paid and after about one month, two months we left Genoa and they didn't get this pay.

Q. In other words, the claim was that they did not get paid for certain work which they did in Genoa, is that right?

A. Exactly.

Q. And did you know of the existence of this complaint?

A. Yes. I was convinced they were already paid and they came down and I asked them. "I am sorry." I was convinced they were paid but, I said, "Of course you will be immediately."

Q. In other words, they had not yet been paid?

A: Not yet, exactly.

Q. But they were going to be paid?

A. Exactly. Not yet been paid.

Q. And Mr. Lioanjie and another man from the Union came up and talked to you about that?

A. No. I knew they that they were on board and they came to me just because I asked them to come in my quarters, and they did.

Q. You asked Mr. Lioanjie to come aboard?

A. Not on board, in my quarters. They were already on board.

Q. Was this the first time you had ever seen Mr. Lioanjie?

A. As far as I remember.

Q. And he was there—let me understand this clearly—he and the other man from the Union were there concerning the complaint of some—

A. No, I don't know. Maybe yes.

Q. You don't know?

A. I don't know.

Q. But you knew that about that time there was a complaint?

A. Exactly. So I connected the two things, but I can't [fol. 228] say. They were falling in.

Q. At that time I think you said to Mr. Lioanjie and the other representative of the Union that you wanted them to obtain permission from the company?

A. Yes, the permission.

Q. And did you tell them who they were to see at the company to get permission?

A. Yes, Mr. Berlingeri or Mr. Wolfson.

Q. Either Mr. Berlingeri or Mr. Wolfson?

A. Yes.

Q. You told them that?

A. Yes.

Q. And did you tell them the address? Did you tell them where to go?

A. I don't remember if I gave them the address but maybe yes.

Q. But you told them that they could talk to either one to get permission?

A. Yes.

Q. And did they then leave?

A. Yes.

Q. No problem with them?

A. No problem.

Q. They acted courteously?

A. What?

Q. They acted courteously?

A. Very.

Q. Did they say anything to you about their representing the people on your ship?

A. No, they said they had already met representatives on the *Victoria*.

Q. They said they had representatives on the *Victoria*?

A. Yes. And they will have very soon on board the *Nassau*, too. They will have on board the *Nassau*, too.

Q. And this they told you before you asked them to get permission, is that right?

A. Well—

Q. About that time. I think you said on your direct examination that you gave them the telephone number of the company?

A. Yes. If I didn't give them at this time I gave them another time certainly.

[fol. 229] Q. What number did you give them, do you know? Would it be the number which is located at 39 Broadway?

A. Yes.

Q. And that is the number that you used?

A. Yes.

Q. When you wanted to talk to Mr. Wolfson?

A. Yes. It is written over there near the telephone. There is a tablet with all numbers.

Q. And that is the number you used when you either want to call Mr. Wolfson or Mr. Berlingeri, is that right?

A. Yes.

Q. Did you see the two gentlemen that day after they left the ship? This is a few weeks before?

A. Yes.

Q. Did you see them? Did they come back that day?

A. No, I don't know. If they came back I don't know.

Q. When did you see them the next time? Would it be the next Friday?

A. About every Friday, you see, they come aboard.

Q. From that point on you saw them every Friday?

A. Yes, every Friday, about.

Q. When they came aboard the next time did you know whether or not they had permission from the company to go aboard?

A. I asked them because they went in my quarters and they said to me, no, we have not, and so I asked them, please, I don't care if you go around but I will accompany you. And they told me, no, please, you don't bother. We don't want the Captain of the ship to be disturbing us. And I gave them an officer to accompany them.

Q. You gave them an officer to accompany them?

A. Yes.

Q. And when they made the rounds of the ship?

A. Yes.

[fol. 230] Q. Did you have any conversations with them on that day other than what you have told us?

A. All the time I had conversations with them.

Q. What did you talk about?

A. Well, about the condition of the—they were attempting to defend the right of these people on the *Victoria* and the *Nassau*.

Q. In other words, they told you that they were there to represent the crews of the *Nassau*?

A. Yes.

Q. And the *Victoria*?

A. Not to represent, to defend the rights.

Q. To defend their rights?

A. Yes.

Q. To handle their grievances or complaints?

A. Yes.

Q. And what did you say?

A. That I said I would inform the Line.

Q. And did you inform the Line?

A. Yes, I did.

Q. Who did you talk to?

A. Mr. Berlingeri.

Q. And did you at any time talk to Mr. Wolfson about the same thing when Mr. Berlingeri was not there?

A. Maybe yes. I don't remember exactly but maybe yes.

Q. But is possible you talk to Mr. Wolfson as well as to Mr. Berlingeri?

A. Yes.

Q. And this was about the complaints of the people who were working on the ship?

A. Yes.

Q. Did you know the nature of the complaints of the people who were on your ship?

A. About the wages.

Q. They complained their wages were too low?

A. Too low.

Q. Did they complain about anything else?

A. I heard just this week somebody was complaining because the Captain was too rigid.

[fol. 231] Q. Rigid?

A. Too rigid.

Q. Too strict?

A. Too strict about some permissions. For instance, he didn't allow them to go ashore when she is entering Nassau when the passengers were going ashore, and I do want them to come back with the last tender, but it is the rule of every passenger ship the crew cannot go ashore with the first tender.

Q. In other words, they complained about—

A. Some strictness.

Q. Your being strict with respect to shore leave?

A. Shore leave, yes.

Q. And did they complain about overtime?

A. They didn't; never to me. I heard just this week now.

Q. Did you hear any complaint about overtime, not getting enough pay for overtime?

A. Yes, they did.

Q. And these people, this Mr. Lioanjie and the other gentleman from the I.M.W.U. told you that they were there to defend these people in connection with their claims, is that right?

A. Yes.

Q. And you talked to them about it?

A. Yes, sir. I told them that I will try to let them contact Mr. Berlingeri and I did one week, and I think he was here, too.

Q. I am talking now about sometime before May 13th. Was he on board the ship when Mr. Lioanjie and other representatives of the Union came aboard?

A. Mr. Berlingeri?

Q. Yes, on some Friday?

A. Yes.

Q. This would be before the 13th?

A. Yes, two times, as far as I remember.

Q. There were two times that you remember before the 13th that Mr. Lioanjie and another man from the I.M.W.U., who is not here in court today, and Mr. Berlingeri [fol. 232] spoke to each other?

A. Yes.

Q. And did they speak to each other in your presence?

A. Yes.

Q. And was this in your quarters?

A. One time in my quarters, one time in Suite B.

Q. And what did they talk about? What was the talk? What was the discussion?

A. The time in Suite B was about the firing by the Captain of the Stewardess.

Q. There was one time they talked about the firing of the Stewardess?

A. Yes.

Q. And this was about how many weeks before May 13th, Captain, do you remember, about?

A. About three weeks, about four weeks; I don't know. Four weeks or so.

Q. About three to four weeks before there was a Stewardess that was fired by you, is that right?

A. Yes.

Q. And where was the Stewardess fired? In New York?

A. Yes.

Q. And is this where the firings always take place, if they do take place at all?

A. Generally, yes.

Q. And if there is a firing it takes place in New York, is that right? If there is a person to be fired he is fired in New York, is that right?

A. Generally. We could fire in Nassau, too, if there is something very, very important.

Q. But as a rule it is in New York?

A. New York, yes.

Q. And is the reason for that that the voyage starts in New York and finishes in New York? Is that the reason for it?

A. I don't think it is the reason. The cruise starts from New York and finishes in New York.

[fol. 233] Q. Well, that is the fact, isn't it?

A. Yes.

Q. The cruise always starts in New York and always finishes in New York?

A. Yes.

Q. This Stewardess was fired because of insubordination or was it for inefficiency or what?

A. Many continuous indisciplines.

Q. She was continually being disciplined, is that right?

A. Yes.

Q. In other words, this girl was fired because she was constantly being disobedient, is that right?

A. Dis?

Q. Disobedient?

A. Disobedient, yes.

Q. The two representatives of the Union spoke to you and to Mr. Berlingeri about this dismissal?

A. Yes.

Q. And what was done about it? Anything?

Q. No, she was disembarked because I told them: "I will speak to you as a person but not like Captain, because I don't want anybody to interfere with my job. If I disembark somebody not even the President of the Line can say anything about it."

Q. Captain, do you know that under contracts with Unions that the Captain does not have the last word in firing a person; that the Union can challenge the Captain's right to fire a person?

A. No, no.

Mr. Stratton: Objected to.

The Court: Objection sustained.

Q. And did they discuss anything else on that occasion?

A. On this occasion Mr. Berlingeri asked them "Do you think that we are glad to disembark somebody? For us it means about $500, $600 or $700 every time to disembark [fol. 234] somebody, so if we are not forced to disembarked neither the Captain nor myself will disembark nobody. And we have the right, because of the contract, to disembark somebody, but since the crew is very well on board we try to avoid this."

Q. According to what contract, Captain, do you have that right?

A. Which the Incres Line prepared.

Q. With whom?

A. With the crew.

Q. With each seaman; is that right?

A. Of course.

Q. You are referring to this contract (indicating)?

A. Well, it is in the entire contract. They signed this one but it is not the complete contract (indicating).

Q. The other things is that book that we were talking about?

A. Yes, the book.

Mr. Ostrin: Have you produced that agreement to which Defendants' Exhibit C refers?

Mr. McAllister: I am sorry, your Honor, that document is in Italian and there is no English translation available at all.

I have been informed by the company that it is based on the Italian National Labor contract.

Mr. Ostrin: I object to what it is based upon. I think at least we are entitled to see what this contract is, the title, the caption, and with who, if anybody, it was made.

The Court: Do you have it?

Mr. McAllister: I don't have it here, your Honor, but we offer to produce it when we find it. The document will be made available. At that time we will object to its relevancy.

[fol. 235] Q. You say they had met with Mr. Berlingeri on another occasion?

A. Yes.

Q. I think you said twice?

A. Yes.

Q. When was the other occasion in relation to May 13th? Was it a week before?

A. More than a week because the week before Mr. Berlingeri—one week before maybe, yes. Before he left with the *Victoria;* yes.

Q. Did they meet with you and Mr. Berlingeri in your quarters on that occasion?

A. Yes.

Q. And what was discussed at that meeting, Captain?

A. About improvement in the wages and Mr. Berlingeri asked them will they be satisfied with the Italian contract,

and your representative answered, "I think so." That will be after the contract.

Q. Do I take it then that the wages on the Italian contract were—

A. Higher.

Q. Withdrawn, and I will start it all over again.

Q. Do I take it that the wages on the standard Italian contract were higher than the wages that your crew people were getting?

Mr. Stratton: Objection, your Honor.

The Court: Overruled.

The Witness: Shall I answer?

The Court: Yes.

A. Yes, they are.

Q. They are higher. And Mr. Berlingeri asked these representatives of the union whether they would be satisfied in getting the wages of your crew members brought up to the wages of the people who worked under the Italian contract?

A. Yes.

[fol. 236] Q. And they said what?

A. Mr. Berlingeri said: "I think we can reach an agreement on this basis."

Q. And reach an agreement with whom? With the International Maritime Workers Union?

A. He didn't say that.

Q. Well, he was talking to the representatives of the union, wasn't he?

A. Maybe he intended with the crew members.

Q. Never mind that he intended.

A. I don't know. He said that.

Q. Let us take this step by step. You say that at this meeting in your quarters at which you and Mr. Berlingeri were present, and also present were Mr. Lioanjie and another member of the union; right?

A. Yes.

Q. In the course of this conversation, as I understand your testimony, Mr. Berlingeri asked Mr. Lioanjie and another man whether he thought the members of the crew would be satisfied if they got the same wages that the peo-

ple working on Italian Line ships or Italian ships get under the Italian contract?

A. Yes, sir.

Q. And he asked that question of Mr. Lioanjie and the other man?

A. Yes.

Q. And Mr. Lioanjie and the other man said, "I think so," or something like that?

A. Yes.

Q. What else was said at that meeting, Captain?

A. Well, the meaning of the discussion was this.

Q. That was all?

A. Yes.

Q. And did Mr. Berlingeri say, I think you said, but I am not sure, did he also say "Well, then I think we can reach an agreement on that"?

A. Yes.

[fol. 237] Q. Captain, the Italian agreement is an agreement which is in force for all Italian seamen who work on Italian flag ships, isn't that right?

A. Yes.

Q. And it is limited only to Italian flag ships, is that right?

A. Yes.

Q. And it has no application to a ship such as yours which flies the Liberian flag, does it?

A. No.

Q. It does not apply to your ship, does it?

A. No, no.

Q. When was the next time that you saw these people?

A. The 13th.

Q. Would that be the 13th?

A. Yes.

Q. I think you said, and correct me if I am wrong, Captain, that you noticed something unusual aboard your ship before she docked, is that right?

A. Not before she docked, after she docked.

Q. Was there anything before she docked?

A. No.

Q. You said something about there was a heavy atmosphere; I think those were the words you used?

A. After we docked.
Q. After you docked there was a heavy atmosphere?
A. Yes, because I heard the pickets said—
Q. What?
A. There were the pickets and I saw this.
Q. There were the pickets?
A. The longshoremen didn't want to work on the cargo, but for half an hour only.

Mr. Ostrin: May I have this marked for identification, please.

(Defendants' Exhibits D and D-1 marked for identification.) (Picket Signs)

[fol. 238] Q. Captain, I show you Defendants' Exhibits D and D-1 for identification and ask you whether these are the picket signs that you saw?
A. The sides, yes.

Mr. Stratton: May I point out, your Honor, that these picket signs say it is the "M/V *Victoria*."
Mr. Ostrin: I know. Aside from the name Victoria.

Q. Aside from the name *Victoria*, did you see a sign like this, but which had the name "*Nassau*" on it instead of the word "Victoria"?
A. I think it was on the top side, S/S. *Nassau*, so far as I remember.
Q. But other than that, the sign was the same?
A. I can't say because I didn't read it exactly.
Q. You came down ashore, did you not?
A. What?
Q. Did you leave the ship sometime on the 13th?
A. No, I didn't ever leave the ship.

Mr. Stratton: Your Honor, we have no objection to this.
Mr. Ostrin: Then I offer this in evidence with the stipulation that this is the picket sign for the *Victoria*. The stipulation is that the picket sign for the *Nassau* was identical except for the name of the vessel, is that so?
Mr. Stratton: We will so stipulate.

(Defendants' Exhibits D and D-1 for identification, picket signs, marked in evidence.)

Mr. Ostrin: Does your Honor care to see it?

[fol. 239] The Court: Just hold it up.

Mr. Ostrin: There is a different legend on each side, your Honor (illustrating).

May I, with your Honor's permission, read the signs into the record?

The Court: Yes.

Mr. Ostrin: The sign is a sandwich type sign. It is worn by a picket, with one side in front of him and one behind him.

One side of the sign reads as follows:

"We want better wages and working conditions for M/V. *Victoria* seamen. This picketing is only against the M/V. *Victoria*. We have no dispute with the other employer.

On the reverse side:

"M/V. *Victoria* unfair. Refuse to recognize International Maritime Workers Union. This picketing is only against the M/V. *Victoria*. We have no dispute with any other employer."

Q. Were the picket signs visible as the vessel approached the dock?

A. No, Friday.

Q. On Friday, as you came up to the dock. When for the first time were you able to see the picket signs?

A. When I realized that the longshoremen were not working any more to load cargo.

Q. Is that when the vessel was fast to the dock?

A. Yes, about 10:30, 11:00 o'clock, something like this.

Q. And how many pickets did you see, Captain?

A. I couldn't say.

Q. Were there a hundred?

A. No. I could see about two or three; I don't know.

[fol. 240] Q. You saw about two or three, is that right?

A. Because from the bridge it is impossible to see outside the dock.

Q. You didn't see a mob of pickets; did you?

A. No.

Q. And were the pickets behaving or walking in an orderly manner?

A. Walking up and down.

Q. So far as you were able to see?

A. Walking up and down.

Q. Were they doing any shouting that you know of?

A. No, but we are far away from the end of the pier.

Q. If you don't know, you don't know.

A. I don't know.

Q. You didn't hear any shouting, did you?

A. I didn't hear.

Q. Did you notice any fighting or any disturbances?

A. I didn't.

Q. Would you say that everything was peaceful and orderly, so far as you were able to see? So far as you were able to see?

A. Yes.

Q. Everything was peaceful and orderly, right. You say as the pickets became visible you noticed that there was a heavy atmosphere aboard the ship, is that right?

A. After the longshoremen came to strike the ship.

Q. You don't know whether the longshoremen went on strike, do you?

A. Yes, because they refused to load the cargo.

Q. All you know is that the longshoremen didn't load the cargo, is that right?

A. I knew that they were not in work and about the pickets.

Q. If you know, isn't it more correct to say that the longshoremen noticed the picket line; that they refused to cross the picket line?

A. Sure.

Q. That is more accurate, isn't it?

A. Exactly.

[fol. 241] Q. And when it became apparent that the longshoremen would not cross the picket line, and would not work the ship, was it at that point that you noticed a heavy atmosphere aboard the ship?

A. Yes, because I was told already when the ship's

purser came to me that there were some dining-room stewards not willing to embark the provisions as usual.

Q. You mean by embarking the provisions, taking the provisions off the boat, off the ship?

A. From the shore on board. Load. Load in its place.

Q. And did you hear anything else?

A. No.

Q. This picket line was outside of Pier 42?

A. Yes.

Q. It was not directly in front of the gangway, was it?

A. No, no.

Q. About what time of the morning, Captain, did you see the union representatives?

A. About noon.

Q. About noon?

A. I think some minutes before noon.

Q. Pardon?

A. Some minutes before noon.

Q. And one of them was Mr. Lioanjie?

A. I don't think so.

Q. No?

A. I saw only one.

Q. You only saw one. If I were to mention his name, would you recognize it?

A. It is very difficult.

Q. Suppose I try.

A. Yes, do try.

Q. Could it have been a Mr. Theodore Ortez Chevaketz?

A. They told me their names many times, but, you see, I didn't pay attention.

Q. We are trying to get them in court, Captain. I don't know whether we can reach them while you are on the stand or not. In any event you say there was one person, [fol. 242] one representative of the International Maritime Workers Union. Had you seen this person before?

A. Yes.

Q. And you knew that he was a spokesman for the International Maritime Workers Union?

A. Yes.

Q. Because he told you that on other occasions?

A. Yes.

Q. Is he the man whom you saw on other occasions with Mr. Lioanjie?

A. Yes.

Q. And is he the man that met with you and Mr. Berlingeri in your quarters on Tuesday?

A. Maybe. I couldn't say—

Q. Did you speak with this man?

A. Yes, I did.

Q. And you asked him what was going on?

A. Yes.

Q. What did he say to you?

A. He said, "Don't worry, Captain," because I told him the dining-room stewards won't work, and he told me, "Don't worry, Captain, we are just coming from the dining-room and they will work now."

Q. And what happened then?

A. He went away.

Q. Did you talk to him about other things?

A. No.

Q. Did he tell you that the union represented a majority or claimed to represent a majority of the crew members?

A. No.

Q. You never heard him say that to you?

A. Not that time.

Q. What?

A. Not at that time.

Q. Not at that time?

A. No.

Q. Did you hear him say that at another time?

A. Another time they said that they hoped the vessel would have the majority of the crew members sign the pledge cards for the union.

[fol. 243] Q. When was that? How many weeks before?

A. About one month ago, maybe.

Q. About a month before they said they hoped to have a majority?

A. Yes.

Q. Captain, at this time the members of the crew were not represented by any other union, were they?

A. They were represented by?

Q. By any other union, were they?

A. No, not as far as I know.

Q. As you said, there was no contract with the Italian union and they were not represented by the Italian union?

A. Well, the contract was approved by the Italian union.

The Court: The contract was what?

The Witness: The contract was approved by the Italian Union.

Q. How do you know that, Captain?

A. The Line told me.

Mr. Ostrin: I move to strike that as hearsay.

The Court: What was your answer? What did you say?

Mr. Ostrin: That the Line told him.

The Witness: Back in Genoa, not here.

Mr. Ostrin: I move that that be stricken.

The Court: I will allow it to stand.

Q. How long did this representation of the International Maritime Workers Union stay aboard the ship on Friday the 13th?

A. I don't know exactly. I just met them on the deck.

Q. Did you then walk away and leave them alone?

A. He walked away.

Q. He walked away?

A. But I think he went ashore.

[fol. 244] Q. You don't know where on the ship he went to, do you?

A. Where?

Q. Where on the ship he went, do you?

The Court: Who is "he," counsellor?

Mr. Ostrin: The representative of the International Maritime Workers Union.

A. He told me that he was coming from the dining-room.

Q. Captain, do you recall having made an affidavit in this case?

A. Yes.

Q. And is this your affidavit?

A. Yes.

Q. Do you recall having said, Captain, that early in the morning (referring to May 13th) one of the officers was told

that whispered call from the deck was directed toward the ship, urging the crew not to perform any work on the ship—

A. Yes, somebody from the dining-room.

Q. Just a minute. Any work, that the ship would not sail because it would be picketed?

A. Yes.

Q. And you stand on that statement, don't you?

A. Yes.

Q. I misread one word, Captain. It was not a whispered call from the deck, it was a whispered call from the dock.

A. From the dock.

Q. From the dock where representatives of the International Maritime Workers Union were?

A. I don't know who. It was reported to me.

Q. That there was a whispered call from the dock? That is where?

A. To where someone was working on board.

Q. Somebody was working on board?

A. Yes.

Q. The crew members at that time were working on the ship?

A. Yes.

[fol. 245] Q. None of your crew members were off the ship at that time?

A. No.

Q. And that there was a whispered call from the dock directing them, the members of the crew, or urging them not to perform their work because the vessel would not sail?

A. Yes.

Q. And you stand on that testimony, is that right?

A. Yes.

Q. Captain, is it correct to say that at all times after the strike occurred when the men refused to work that there were adequate personnel to insure the safety of the vessel while she was in port?

A. Yes.

Q. In other words, you had your watchers, your engine watch and your deck watch; is that right?

A. Yes. Only the day we had passengers on board there were not enough.

Q. And did you receive the co-operation of the Union on that score?

A. Yes.

Q. In other words, when you asked a representative of the Union sometime during the afternoon of the 13th to provide you with enough men to man the watches for safety purposes they got you those men?

A. In the evening, not in the afternoon.

Q. They finally got you those men?

A. When I asked them.

Q. I beg your pardon?

A. When I asked them.

Q. When you asked them they respected your request, didn't they?

A. Yes. They put some more men. I asked, you see.

Q. What?

A. I asked for many others but they put some men when I asked for them.

Q. I don't get that last part.

A. I asked, for instance, 20 people. They gave me 12.

[fol. 246] Q. You mean for the stewards to help serve the passengers?

A. No, no, no. For the deck department, for the engine department. I also asked for the orderly just to take care of something and they refused me.

Q. Who refused you?

A. Well, they didn't send me. They gave me a note: "We know the rules. It isn't for you."

Q. They gave you a note and they said these are all the people that you need?

A. Yes.

Q. And did they give you those people?

A. Yes, they did.

Q. And then you were talking to the representatives of the International Maritime Workers Union, is that right?

A. Yes, I spoke with them at night.

Q. Wasn't that sufficient to satisfy the safety requirements of the vessel?

A. While she was in port, yes.

Q. While she was in port?

A. Yes.

Q. So they gave you enough people to satisfy the safety requirements of the Coast Guard for the vessel while she was in port, is that right?

A. Yes.

Q. At what time was it on the 13th that the people started to leave the ship?

A. About 5:00 o'clock.

Q. The crew members?

A. 5:00 o'clock, about.

Q. About 5:00 o'clock, and did you follow them?

A. Yes, when I knew.

Q. What?

A. When I knew then.

Q. When you learned what you followed them?

A. Yes.

Q. And where did you catch up with them?

A. Near the gangway.

Q. Near the gangway?

A. Yes.

[fol. 247] Q. On the ship?

A. No.

Q. Off the ship?

A. On the pier.

Q. In other words, you got off the ship and down the gangway?

A. Yes.

Q. And you caught up with them at the Pier?

A. Yes.

Q. And did you speak with them?

A. Yes.

Q. What did you say?

A. I told them already—

Q. What did you say?

A. Shall I tell you?

Q. Yes, please do.

A. Please, you come back on board because Mr. Berlingeri promised me to come on board the *Nassau* next Friday just to discuss everything with everybody of you and just to reach an agreement.

Q. You knew what they were looking for was an agree-

ment between your company and the International Maritime Workers Union, is that right?

A. Yes.

Q. You knew that?

A. They told me, yes.

Q. They told you that. They told you that they wanted to be represented by the International Maritime Workers Union, is that right?

A. Yes.

Q. And you then asked them to be patient and wait until Mr. Berlingeri would come back?

A. Yes.

Q. And do what?

A. And reach an agreement with them.

Q. And did you reach an agreement with them?

A. Yes.

Q. When you say "with them," with the International Maritime Workers Union?

A. No, with the crew.

Q. And what did they say?

A. They answered, "We don't want more promises, we want to reach an agreement. You speak now only through the Unions."

[fol. 248] Q. You speak now only what?

A. You speak now only to the Unions.

Q. They said to you you can speak now only to the Union?

A. Yes.

Q. Did you understand them to mean by that that they could only speak to the Union for their interests, is that right?

A. Yes. The Line spoke to the Union.

Q. That is what you understood them to say?

A. Yes. Two or three screamed like this.

Q. Did you hear anybody say anything different than that?

A. No, everybody hollered it.

Q. And they made it plain to you they wanted representation by the International Maritime Workers Union, they wanted a contract with the International Maritime Workers Union?

A. They didn't say that. They said, we speak only through the Unions.

Q. Speak through the International Maritime Worker's Union?

A. Through the Union.

Q. And you said to wait until Mr. Berlingeri comes back?

A. Yes.

Q. So until 4:00 o'clock is it your testimony that everybody did his duty?

A. Yes, until 5:00 o'clock.

Q. Until about 5:00 o'clock?

A. Yes, because from noon to 4:00 o'clock they were on leave. They come on at 4:00 o'clock and they did the job till 5:00 o'clock.

Q. I think you said about 5:00 o'clock you were standing near the purser's desk?

A. Yes.

Q. And you telephoned Mr. Wolfson?

A. Yes.

Q. And what did you say to Mr. Wolfson?

A. The situation was quite good because everybody was doing his duty.

Q. And when you say the labor situation, you have in mind—withdrawn.

[fol. 249] When you said "The situation" you had in mind the labor situation, didn't you?

A. Yes.

Q. And you were calling Mr. Wolfson to report to him on that, is that right?

A. Yes.

Q. And at that point is when you heard or someone told you that the members of the crew were getting off the ship: right?

A. You mean more or less?

Q. Yes, about that. What time was it when you told the passengers to go ashore?

A. To eat?

Q. For dinner, yes.

A. About 8:45.

Q. And what else did you tell them?

A. To come back 10:00 o'clock because we hope to reach an agreement and it is possible to leave.

Q. You hoped to reach an agreement concerning this difficult labor situation; right?

A. Yes.

Q. To reach an agreement with whom?

A. Mr. Wolfson was speaking, I don't know to whom. He told me to wait, I will let you know some orders.

Q. Did you know Mr. Wolfson was speaking with Mr. Shannon Wall, the Executive Director of the International Maritime Workers Union?

A. I didn't know that.

Q. But you know that he was speaking with some representatives of the Union?

A. Yes.

Q. And was it at that time in the course of the day that Mr. Wolfson did tell you that negotiations were going on?

A. Yes, sir.

Q. And did he tell you there was a possibility of reaching an agreement with the Union?

A. Yes.

Q. And this was what you reported to the passengers; right?

A. Yes.

Q. To come back at 10:00 o'clock because by that time maybe an agreement would have been reached with the Union; is that right?

A. Yes.

[fol. 250] Q. Then at midnight you told the people that the cruise had been cancelled but they could stay aboard the ship?

A. Yes.

Q. Over night, is that right?

A. Yes.

Q. Captain, I think you said in the direct examination that the ship was ready to sail at 6:00 o'clock except for the unwillingness of the crew?

A. Yes.

Q. Had all the provisions been loaded by that time?

A. Yes.

Q. And they were loaded by whom?

A. Only by the Chief Steward and his assistant and a few men from the kitchen.

Q. And they loaded 70 tons?

A. No. The 70 tons was cargo for Nassau. This was supplies.

Q. The supplies were loaded but the cargo wasn't?

A. The cargo not.

Q. The cargo was not loaded. Who cancelled the cruise, Captain? From whom did you learn that the cruise was cancelled?

A. Mr. Wolfson talked to me.

Q. Mr. Wolfson told you?

A. Yes, he called me and he said the cruise is cancelled.

Q. Captain, did you discharge any of the members of the crew?

A. What?

Q. Have you discharged any of the members of the crew? Have you fired any of them?

A. From the 13th, no, no.

Q. You have not fired anyone?

Mr. Stratton: I didn't hear that.

Mr. Ostrin: From the 13th on.

Q. You still regard them to be employees of Ingres Steamship Company?

A. Of course.

Q. On your ship, is that right?

A. Yes.

[fol. 251] Mr. Ostrin: I have nothing further, your Honor.

The Court: We will take a short recess.

(Short recess.)

(After recess.)

JOHN W. ATWELL, residing at 7001 Colonial Road, Brooklyn, New York, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. McAllister:

Q. Mr. Atwell, what is your occupation?

A. I am the operating manager for the Cosmopolitan Shipping Company, Incorporated, at Pier 42.

Q. What is the Cosmopolitan Shipping Company?

A. We are managing agents for various steamship lines and companies.

Q. Are you managing agent for the Ineres Steamship Company?

A. We are acting as ship's husbands for the Ineres Nassau Agency, New York.

Q. And what does a ship's husband do?

A. Well, we supervise the vessel while it is in the Port of New York in regards to loading of cargo, working the ship and arranging for dispatch.

Q. Taking care of the docking facilities?

A. We enter and clear the vessel also, yes.

Q. Do you do this for other steamship lines as well as the Ineres Line?

A. Yes.

[fol. 252] Mr. McAllister: Your Honor, I am going to ask counsel in order to expedite the matter whether he will concede that the entry of these vessels, both the *Nassau* and the *Victoria*, were lawful, that there was lawful entry in the Port of New York; that all of the laws with regard to entry had been complied with and all necessary regulations?

Mr. Ostrin: I don't know about departing, but certainly they lawfully entered the Port of New York.

Mr. McAllister: Only in so far as compliance with the necessary maritime regulations.

Mr. Ostrin: I will admit it.

Q. Mr. Atwell, did you make arrangements for the docking of the *Nassau* in Pier 42?

A. Yes, I did, my department did, my Port Captain.

Q. Had you made arrangements at the dock for the Motorship *Victoria* on May 15th when it arrived?

A. Yes, she was also scheduled to dock at Pier 42, North River.

Q. Did you dock the *Victoria* at Pier 42?

A. No, we could not dock the ship at Pier 42 because we did not have a berth. By that I mean the Norwegian American Line needed a berth on Monday morning and they advised us that we could not bring the *Victoria* in as long as the *Nassau* was remaining on the north side of Pier 42.

Q. Did you attempt to find another berth for the M S *Victoria*?

A. Yes, we endeavored to secure a berth on Saturday morning, the 14th. We called various friends that we deal with in New York.

[fol. 253] Q. Were you able to obtain a berth?

A. No, we could not secure a berth.

Mr. McAllister: Your witness.

Cross examination.

By Mr. Ostrin:

Q. Mr. Atwell, you said you are operating manager of the Cosmopolitan Shipping Company. You have been acting as agent for Ineres, is that right?

A. Well, I was employed back in 1950, 1952, and I think it was during that two year period that we acquired the husbandry agency for the Ineres Line; Incorporated.

Q. And in the course of your relationship with Ineres Lines have you had conversations with any of its personnel?

A. Oh, yes.

Q. With whom?

A. Well, I could say I have probably spoken with everyone in their office, Mr. Wolfson, and I think I have had occasion to talk with Mr. Berlingeri, Mr. Jordan.

Q. You have talked to both Mr. Wolfson and Mr. Berlingeri, is that right?

A. Yes.

Q. In connection with what sort of matters?

A. Just to advise him that the vessel was coming into port or that we had certain cargo. By that I mean I received the first report on the ship when she comes into Ambrose and it was always standing instructions as soon as we had a report that the ship arrived in port or came into Ambrose to notify the Ineres Line.

Q. Mr. Atwell, is it correct to say that when you spoke to Mr. Wolfson or Mr. Berlingeri depended upon who is more readily available to you?

A. Yes, I believe so. I also passed that information on to a Mr. Jordan.

[fol. 254] Q. But so far as you were concerned in your dealings with the company it made little difference whether you spoke to either Mr. Wolfson or to Mr. Berlingeri, is that right?

A. No, as long as I gave someone the information.

Q. And the information had to do with the operation of the vessel?

A. Yes.

Q. By whom is the Cosmopolitan Shipping Company paid, do you know?

A. That I don't know.

Q. You don't know?

A. No.

Q. You don't handle the finances?

A. No, I am only a department head.

Q. Mr. Atwell, do the Nassau and the Victoria regularly dock at Pier 42?

A. Yes.

Q. Do you know who controls or holds that pier?

A. It is a City-owned pier and it is under lease to the Norwegian-American Line.

Q. So I take it it is used by both Ineres and Norwegian-American Lines?

A. Yes, sir.

Q. Is there any other company that uses that pier?

A. Not to my knowledge.

Q. In the course of your contacts with the Ineres Steamship Company do you ever receive orders from one of its representatives or directions or requests to do something?

A. No. The only time ever was Mr. Wolfson had requested us to secure a berth for the Victoria.

Q. He requested you to secure a berth for the Victoria?

A. For the Victoria when it was found the ship would not dock at Pier 42.

Q. In the normal conduct of your business with the Ineres Steamship Company are there occasions when you receive requests to do something in connection with either the Nassau or the Victoria?

A. Only in connection with the operation of the ship in port, in New York.

[fol. 255] Q. And from whom would you receive those requests?

A. Well, we could get them from Mr. Jordan, Mr. Wolfson, Mr. Berlingeri.

Q. From any one of the three?

A. From any one, yes.

Q. Any one of the three might ask you, as the manager of Cosmopolitan Steamship Company to do something in connection with the operation of the vessel?

A. Yes.

Q. What do you mean by the operation of the vessel? What goes into that so far as your company is concerned?

A. Well, just as far as my department is concerned, we supervise the disembarkment of passengers. By that I mean we order lab or to handle baggage, to take it off the ship. We also hire store gangs. We also hire linemen, bunkers for the ship, tugboats, pilots.

Q. All of these things are necessary for the proper berthing of a vessel, aren't they?

A. Correct.

Q. And all are in conjunction or in connection with the operation of the vessel?

A. Yes, sir.

Q. And, as I understand your testimony, you will receive or have received from time to time requests to perform certain operations or do certain things in connection with the operation of either the Victoria or the Nassau by any one of three people, either Mr. Wolfson, Mr. Jordan or Mr. Berlingeri, is that right?

A. Yes. They are the people that we deal mostly with.
Q. And these are the ones that you have contacted?
A. Yes.
Q. Do you know who Mr. Jordan is?
A. I believe Mr. Jordan has a title. I know who he is. [fol. 256] I believe his title is passenger manager or passenger traffic manager of the Incres Line Agency.

Mr. Ostrin: That is all.

(Witness excused.)

Luigi Rossaldi, residing on the Steamship *Nassau* at Pier 42, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. McAllister:

Q. What is your nationality?
A. Italian.
Q. What is your occupation on board the S/S. *Nassau?*
A. Maitre d'hote.
Q. What are your duties on board the S/S. *Nassau* as
A. Maitre d'hote.
A. Supervising the dining room, embarking of passengers, disembarking of passengers and general care of passengers.
Q. Were you on board the *Nassau* when it docked at Pier 42 Friday morning?
A. Yes, sir.
Q. What were you doing at that time?
A. At that time I was taking care of the disembarking of the passengers.
Q. Where were you about 9:30 that morning?
A. I was in the dining room.
Q. What were you doing there?
A. Supervising the breakfast. It was closing time for breakfast.
Q. What was the location of the dining room with reference to the dock itself?

A. It is about the same floor, the height of the dock.
[fol. 257] Q. And are there portholes?
A. Yes.
Q. From the dining room to the outside of the ship?
A. Yes, from the dining room to the outside of the ship.
Q. Will you just tell us what you heard and what you saw at that time?
A. I hear through the porthole, you know, somebody shouting that we are on strike on shore. So I have to take a look out of the porthole and I see part of the crew. He shouts everybody—
Q. Will you talk more slowly?
A. "Come everybody ashore because we are on strike." But this has happened many times when they were speaking about strikes on the ship. So I thought it is going on again. So I go upstairs.
Q. Before we go to that, Mr. Rossaldi, did you see any crew members on the dock?
A. Yes, there was mixed. There was a few people I didn't know.
Q. Did you see others on the dock who were not crew members?
A. Not crew members, yes.
Q. Could you see from the porthole where you were looking any picket line?
A. No, sir.

Mr. Ostrin: What day are we talking about now?
Mr. McAllister: This is Friday.
Mr. Ostrin: The 13th?
Mr. McAllister: May 13th.

Q. Tell us what took place about 6:00 o'clock Friday evening, that same day?
A. The same day I see all the waiters start to disembark the passengers so I seen them working all around, so I see no strike because nothing happens. I did go to look and make observations about table reservations for the passengers in the lounge upstairs.
[fol. 258] Q. Will you please speak a little bit more slowly?

A. So at 5:00 o'clock usually I help the assistant, I help assist the head waiters and take care of table reservations for the passengers. They are standing in line and they are sitting, and we are starting with the reservations to please the passengers.

Q. What time was this, about?

A. It was about 5:00, quarter past 5:00.

Q. Quarter past 5:00?

A. Yes.

Q. And then what happened?

A. About 6:00 o'clock we didn't see any stewards any more around bringing the passengers in. So I was wondering, but I didn't inquire about it. Finally there comes in a little man, an Italian, he said, "Hey, Rossaldi, a strike ashore."

"Who are you?"

Q. Did someone come to you?

A. Yes. Two men. I didn't know which. One colored man and one white man. The little one, is asking me, "Who are you?" He ordered me to go out. "We are representing the Union." He said, "You have to go ashore."

Q. Speak slowly.

A. "We are representing the Union, the American International Union, and everybody is on shore of the crew, so you are ordered to go ashore."

I say to him just at the moment: "I take orders only from my Chief Purser."

Q. Is the Chief Purser, your boss?

A. Yes, directly my boss. So I did go down to him and I asked him, "What's it all about?" Because I didn't know what was happening and he has told me everybody is on shore.

"You can go ahead and take some passengers but there is nobody to take care about it, so what do you want?"

[fol. 259] Q. What did you do?

A. So I called the assistant head waiter, and called him down and I say: "We can do nothing alone here. Let us go take a look what's happening. Let's go ashore also."

So we go ashore. All the crew was there. There were many men. They were speaking there and I see pickets

go up and down. Then they called something with the *Nassau* unfair. I didn't read all the stuff.

Q. Did you see that after you went ashore?

A. Yes.

Q. Can you recognize in the court room either of the two men who came on board the ship?

A. No.

Q. They are not here?

A. No.

Q. Why did you go ashore?

A. Just more out of curiosity than anything, to see what was happening, what the boys are doing. They were all on strike.

Mr. McAllister: No further questions.

Cros examination.

By Mr. Ostrin:

Q. Mr. Rossaldi, you said that you were in the dining-room at about 9:30 in the morning of May 13th? You have to say either yes or no, because the reporter can't take it when you shake your head. The reporter can't see what you are doing. You must say yes or no.

A. Yes.

Q. And at 9:30 in the morning the vessel had not as yet docked, had it?

A. Yes, it was docked.

Q. It was docked?

A. Yes.

Q. And you say there were portholes in the dining-room out of which you could look onto the dock?

A. Yes, sir.

[fol. 260] Q. At that point, you say this was about 9:30, you heard some of the people talking about strike. Who did you hear talking about that? Was it members of the crew?

A. Members of the crew mixed with people that I didn't know.

Q. Members of the crew with whom?

A. Also people that I didn't know who it was.

Q. Were they passengers?

A. No, I don't think so. I don't know.

Q. Was anybody aboard the ship at 9:30 in the morning?

A. What?

Q. Had anybody gotten aboard the ship from shore at 9:30 in the morning?

A. Well, I think yes, because many of us had passengers to bring the baggage there.

Q. What time did the vessel dock, actually?

A. 9:00 o'clock, about.

Q. And then the gangway would let down and people could have gone aboard the ship?

A. I don't know.

Q. You don't know?

A. No.

Q. But you do know you saw people in the dining-room?

A. Out of the dining-room.

Q. Members of the crew?

A. On the pier.

Q. Let us start all over again. I don't think I understand you. You were in the dining-room at about 9:30 in the morning?

A. Yes, sir.

Q. You were looking out of the porthole?

A. No, I didn't look at 9:30.

Q. You heard some of the crew members in the dining-room say something about a strike?

A. Yes.

Q. And you saw some strangers there?

A. No, sir; outside on the pier it was.

Q. There were no strangers in the dining-room, were there?

A. No.

[fol. 261] Q. But you heard the crew members talking about a strike?

A. Yes.

Q. And I think in substance you said that that didn't excite you too much, because you heard about a strike before?

A. Yes, sir.

Q. When was the other time that you heard about a strike?

A. Oh, many times. Sometimes they are speaking, sometimes making fun; so I didn't think of it.

Q. Did you hear about a strike while the ship was coming in from Nassau?

A. No, always in port here.

Q. Always in port?

A. Yes.

Q. Did you hear about a strike in connection with the crew members wanting more wages?

A. Yes, something about that they were speaking.

Q. And about their wanting better conditions?

A. Yes.

Q. And in connection with this hearing about a strike, and I am talking about hearing of a strike before May 13th, did you hear talk about this new International Maritime Workers Union?

A. Yes, sir. I hear something about it.

Q. And did you hear the people in the Steward's Department talk about their wanting to be represented by the International Maritime Workers Union?

A. Not represented, but to be a subscriber.

Q. To be part of the contract?

A. Yes.

Q. You heard them say this, that they want the International Maritime Workers Union to have a contract with the company for their benefit?

A. No.

Q. Well, what did you hear?

A. That they have to be inscribed, everybody, as a crew member in the new International Seaman's Union.

[fol. 262] Q. That they should join the new union?

A. Yes, join.

Q. And you heard all of this even before May 13th, didn't you?

A. Yes, months before.

Q. And you heard talk about a strike in this connection, is that right?

A. Yes, sir.

Q. I want you to understand my questions, because I want you to pay attention to them. If you don't know them, ask me. What you have said so far is true and you understood everything I asked you, is that right?

A. Yes, sir.

Q. Then when was it that you saw the pickets?

A. It was evening, after six o'clock.

Q. And where were you when you saw the pickets?

A. Down by the pier. In front of the pier, on shore.

Q. And were these signs that you saw them wearing, referring to Defendants' Exhibits D and D-1?

A. Yes, instead of Victoria it was Nassau.

Q. But otherwise it was the same sign; right?

A. Yes, sir.

Q. How many pickets did you see wearing these signs?

A. Three or four men.

Q. No more than four?

A. No.

Q. And were they marching up and down peacefully?

A. Yes. Peacefully, in front of the pier.

Q. How far were you from them?

A. Oh, I must have been about fifty, sixty feet.

Q. You were fairly close to them; right?

A. Yes.

Q. Were they making any disturbance?

A. No.

Q. Were they talking?

A. They were talking between them, you know.

Q. Between themselves?

A. Yes.

Q. They weren't shouting, were they?

A. No.

Q. They weren't making any disturbances, were they?

A. No. I didn't notice it at all.

[fol. 263] Q. Would you say that the picketing, so far as you were able to see, was in all respects peaceful?

A. I think so.

Q. And orderly?

A. Yes, sir.

Q. Do you know whether the pickets accused anybody or threatened anybody?

A. I don't know.

Q. Did you see anything like that?

A. No, sir.

Q. Now you say about six o'clock that evening two men came aboard the ship. You don't know who they are?

A. No.

Q. And they said they will go on strike. What was it they said?

A. One must have been an Italian, an American-Italian, because he was speaking a mixed language, you know.

Q. He was speaking broken Italian?

A. Broken Italian. "Paisanos, strike." That means, "Landsmen, come out on strike."

Q. Where did they talk to the people. Was this in the dining-room?

A. No, in the lounge upstairs.

Q. How many people were there?

A. There were about a hundred passengers in lines, double lines, because there are two settings. And there was a head waiter, my assistant, and I alone.

Q. Were the crew members there?

A. No.

Q. They came in this room where there were no crew members and they said in broken English: "Hey, let's go off"?

A. One was speaking, the little one. The colored one, he stayed by the door.

Q. And he said, "Let's strike"?

A. Yes.

Q. And you heard this very clearly?

A. Yes.

Q. And these were not members of the crew, were they?

A. No. I never seen them before and never after that.

Q. And you don't know who they are or where they came from?

A. No. I asked them who they are, and they told me: "We are representatives of the International Union."

[fol. 264] Q. Oh, I see. They told you that?

A. Yes, because I wouldn't want to take orders from nobody, you know, that you don't know who they are.

Mr. Ostrin: I have no further questions.

(Witness excused.)

* * * * * * *

[fol. 266] PAOLO VAGLIASINDI was recalled as a witness in behalf of the plaintiff, and having been previously duly sworn, was examined and testified further as follows:

Direct examination.

By Mr. McAllister:

Q. Captain, I hand you Plaintiff's Exhibit 4 for identification and ask you to please state what that is.

A. It is the Ineres Line contract for the crew, for the crew that is on board the steamships *Nassau* and *Victoria*.

Q. Is this the document referred to in the seamen's articles?

A. It is.

Mr. McAllister: You may examine.

Cross examination.

By Mr. Ostrin:

Q. Captain, the document that you have in your hand, Plaintiff's Exhibit 4 for identification, is referred to in Defendants' Exhibit C in evidence, is that right? It is made mention of? This document is made mention of in this document, is that right (indicating)?

A. It is, yes.

Q. Where in this document do we have mention made of it (referring to Defendants' Exhibit C)?

(Witness indicates.)

[fol. 267] Q. The very last paragraph which in English says, "Having read the contents of the contract of the Ineres Steamship Company, Ltd. which to all effects and purposes is to be considered hereafter fully transcribed, and having read the present agreement, the parties have

accepted and signed same before me, Counsel General of the Republic of Liberia," is that right?

A. Yes.

Q. That is the paragraph you are referring to?

A. Yes.

Q. In other words, Captain, as I understand it, when a seaman signs the crew roll and articles of agreement, which is in evidence as Defendants' Exhibit C, he agrees to be bound by this document which is Plaintiff's Exhibit 4 for identification?

A. Yes.

Q. Does the seaman who signs Defendants' Exhibit C, does he negotiate with the company for this?

COLLOQUY

Mr. McAllister: I object, your Honor. We are just trying to identify the document. It is irrelevant.

Mr. Ostrin: I am leading up to something, your Honor. I want to know whether Plaintiff's Exhibit 4 for identification is a unilateral set of rules which are imposed upon a seaman who takes employment, or whether there is collective or individual negotiation.

Mr. McAllister: Your Honor, there has been no showing that the Captain takes any part in the matter.

Mr. Ostrin: We want to get to the truth of this, your Honor. We want to get to the bottom of it.

[fol. 268] The Court: It doesn't make any difference in this case whether it is unilateral or not. The only point involved is whether you have got a right to interfere with the two ships. That is my ruling in this case. I don't think that makes any difference.

That is all. You may step down.

Mark it in evidence subject to translation. This is not a trial, this is a hearing on a temporary injunction.

(Plaintiff's Exhibit 4 for identification received in evidence.)

Mr. McAllister: Your Honor, we would like to call the official interpreter to translate for the record, if we may, the three articles, which are quite short.

The Court: You may.

Mr. McAllister: I refer to Plaintiff's Exhibit 4 in evidence and I ask the official translator to please translate Article 5, which consists of four lines.

The Official Translator: "Article 5. Conduct of enlisted men.

"The crew has the duty of maintaining discipline, to obey all legitimate commands by the Master, or by any other superior, or any regulations which involve the service and the safety of the ship, of its cargo and of its provisions."

Mr. McAllister: I ask you, please, to turn to Article 8 of Plaintiff's Exhibit 4 and please translate that.

The Official Interpreter: "Article 8. Beginning of service on board.

[fol. 269] "The enlisted must be on ship on the day and time indicated by the ship owner or by any of his representatives or by the Master. In lack of this indication, he must be on board at least two hours before sailing. In case the seaman does not comply with these dispositions, under the contract of enlistment, he will be dealt with as terminated, being terminated by default of the seaman himself, unless the enlisted person can furnish proof that the lateness was due to an act of God or was due to a justified motive."

Mr. McAllister: I ask you, please, to turn to Article 34 of Plaintiff's Exhibit 4, and to please read the heading and substance.

The Official Interpreter: The title of Article 34 is: "Termination of the contract of enlistment."

Mr. McAllister: Will you then continue?

The Official Interpreter: "The contract of enlistment can be terminated:

"(a) By will of the seaman,

"(b) By will of the ship owner—see Article 35.

"(c) By Act of God or by just cause.

"(d) By enlistment of the seaman in the Army as an officer or commissioned officer or soldier.

"(e) By fault of the seaman."

Mr. McAllister: Will you please continue, Subparagraph A:

[fol. 270] The Official Interpreter: Subparagraph A refers to "(a) Termination by whim of the seaman."

Mr. McAllister: Will you please read on:

The Official Interpreter: "The contract of enlistment can be terminated by the enlisted man with notice of at least 48 hours before the departure of the ship from the port of the ship owner or of 48 hours before the arrival in the port."

Mr. McAllister: Does that conclude paragraph A?

The Official Interpreter: No, there is some more.

"The seaman will be given the indemnity for the termination of the contract corresponding to his seniority but without any minimum guarantee."

Mr. Ostrin: Does this follow A?

The Official Interpreter: This follows A. It is a continuation. I am turning the page:

"The enlisted man cannot be disembarked without the authorization of the Maritime Authority or of the Consul in case he cannot be replaced. In any case the termination of the contract by the free will of the seaman frees the ship owned from the obligation to take the enlisted man to the port where he was enlisted and all expenses of the repatriation will be paid to the seaman himself."

Mr. McAllister: Does that conclude your translation of Article 34, Subparagraph (a)?

The Official Interpreter: That is right.

[fol. 271] Mr. McAllister: Thank you.

The Court: Plaintiff rests?

Mr. McAllister: Plaintiff rests, your Honor. We have only two further documents that were requested of us by the defendant. The first is a list of the men who left the *Victoria* Wednesday morning at 6:00 or 6:30 A. M., and we understood they undertook to procure the gangway list. This identifies those individuals and I hand to Mr. Ostrin a list of those men (handing paper to Mr. Ostrin).

Mr. Ostrin: That left the vessel?

Mr. McAllister: That left the vessel.

Mr. Ostrin: I remember that.

Mr. McAllister: Your Honor, we were also asked to produce a list of some 200 names of persons of the crew

of the *Victoria* in the stewards department who signed the paper at, I believe, 2:00 A. M. on Wednesday.

This document I have in my hand contains an opening statement which is in Italian and under which the signatures appear. I would ask leave to have Mr. Ostrin come to a conference at the bench before these names are turned over, if I may.

(Discussion at the bench, off the record.)

The Court: Plaintiff rests. We will take a short recess.

(Short recess.)

* * * * * * *

[fol. 282] Afternoon Session
2:00 O'clock P. M.
Monday, May 23, 1960

Mr. Ostrin: Your Honor, in view of the amount of testimony that has been adduced by the plaintiff and the testimony which will be adduced by the defendant, I was wondering whether perhaps we could stipulate with counsel for the plaintiff that the hearing on the motion for a preliminary injunction might also be regarded and treated as a hearing on the trial for a permanent injunction. We are ready to go ahead with our evidence. We would be prepared within a few days to get in our answer and perhaps counsel can file his note of issue and we can regard this hearing on the preliminary injunction also to be the hearing for the permanent injunction.

The Court: That would be a desirable thing, I should imagine.

Mr. Ostrin: I imagine that would be a very desirable procedure.

Mr. McAllister: My only problem is, your Honor, we have not set forward yet any proof of damage and that we would wish to do at a later trial.

The Court: Don't do that until you get your injunction.

Mr. McAllister: I understand.

Mr. Ostrin: I say if there was an injunction issue, we could still have a hearing on damages.

The Court: Yes, surely.

[fol. 283] Mr. McAllister: My only concern, your Honor, is, that it seems to me an effort of further delay.

The Court: I don't think Mr. Ostrin means to further delay.

Mr. Ostrin: No, I think this would expedite it. I am ready to go ahead with our testimony.

Mr. McAllister: But Mr. Ostrin said he would not have an answer in for a few days, as I understood him.

The Court: That wouldn't make any difference. In other words, you would want me to withhold my disposition on the preliminary injunction until after your answer is in?

Mr. Ostrin: I don't think that is necessary, your Honor. Our answer essentially is going to be a general denial, with some affirmative defenses, and I think your Honor knows them and Mr. McAllister knows them, jurisdiction labor dispute, and so on. I might say just what our affirmative defenses will be. One will be that the Court has no jurisdiction of the subject matter of the action. Another is that there is a labor dispute within the meaning of 876-A, and that the plaintiffs have not complied with it, and, third, will be that this is not coercive picketing, the first amendment, it is legitimate trade union activity, and that will be about the extent of our affirmative defenses.

Mr. McAllister: Your Honor, I hesitate to stipulate now until I have heard the evidence. We may wish to make [fol. 284] replies to whatever evidence may be adduced here, but, beyond that, and the point of damage—

The Court: I think Mr. Ostrin's only purpose is he wants to get a stipulation from you that such testimony as is taken here on the application for a preliminary injunction may be deemed by both parties as evidence taken for the permanent injunction, so that the Court can give a definitive disposition, and he can go up to 25th Street.

Mr. McAllister: We will so stipulate, your Honor.

Mr. Ostrin: As a matter of fact, I think this would expedite it.

The Court: Yes, I think so.

Call your first witness.

SHANNON J. WALL, residing at 64 West Saddle River Road, Waldwick, N. J., called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Ostrin:

Q. Mr. Wall, do you hold an office in the International Maritime Workers Union?

A. Yes, I do. I am the Executive Director of the International Maritime Workers Union.

Q. Do you know when the International Maritime Workers Union was formed?

A. Late November 1959.

Q. Does the International Maritime Workers Union have a Constitution?

A. Yes, it does.

[fol. 285] Mr. Ostrin: May I have this marked?

(Constitution of the International Maritime Workers Union marked Defendants' Exhibit E for Identification.)

Q. I show you Defendants' Exhibit E for Identification and ask you whether that is the Constitution of the International Maritime Workers Union?

A. Yes, it is.

Q. Do you recall the date that it was adopted?

A. November 25, 1959.

Mr. Ostrin: I offer the Constitution in evidence.

Mr. McAllister: No objection.

(Defendants' Exhibit E for Identification received in evidence and marked Defendants' Exhibit E.)

Q. Mr. Wall, who formed the International Maritime Workers Union?

A. It was formed by the National Maritime Union and the Seafarers International Union.

Q. Are both of these organizations American Labor organizations?

A. Yes, they are. They are both affiliated with the Ameri-

can Federation of Labor, Congress of Industrial Organization.

Q. And both represent merchant seamen?

A. Yes, they do.

Q. Are you a member of the National Maritime Workers Union?

A. Yes, I am.

Q. Do you hold an office in the National Maritime Workers Union?

A. Yes, I do.

Q. Do you know whether the National Maritime Workers Union admit to membership and represent non-resident [fol. 286] alien seamen?

A. We have non-resident alien seamen membership, yes.

Q. Does the National Maritime Union also represent alien seamen?

A. Yes.

Q. Are these seamen employed aboard vessels with whom the National Maritime Union has contracts?

A. Yes, they are.

Q. Are these seamen covered by the same contracts which cover American seamen?

A. In the main, yes.

Q. Mr. Wall, have you ever heard of the International Federation Transport Workers Union?

A. Yes, I have.

Q. Will you tell us something about that organization?

A. The International Transport Workers organization has headquarters in London. The Executive Secretary is Mr. Omar Becu.

Q. (Spelling) B-e-c-u?

A. B-e-c-u. It is made up of some 62 nations, those that are not behind the Iron Curtain, the free countries of the world, and made up of the various Transport Workers Trade Union centers in the various countries.

Q. And these Transport Workers Unions, I take it, include Maritime Unions?

A. Yes. There is a special section of seafarers and dockers.

Q. And I take it there are other Transport Workers Unions who are not identified with the marjtime industry?

A. That is right.

Q. They would include what type of Unions?

A. Railroads in the main, Trucking industries, Airlines.

Q. This is an International Confederation of Transport Unions throughout the entire free world, is that right?

A. That is correct.

Q. Is the National Maritime Union a member of the I. T. F.?

A. Yes, it is.

[fol. 287] Q. I. T. F. stands for International Transport Federation Union, does it not?

A. Federation.

Q. Is the Seafarers International Union of North America a member of the I. T. F.?

A. Yes, it is.

Q. As an officer or member of the National Maritime Union, did you have occasion to attend a conference of the I. T. F. in London prior to the formation of the International Maritime Workers Union?

A. There have been several meetings.

Q. When was the meeting preceding the date that the International Maritime Workers Union was formed, the approximate date of that?

A. The date of the meeting preceding—

Q. That is right, bearing in mind that the I. M. W. U. was formed on November 25, 1959?

A. There was a meeting immediately subsequent to that the 1st of December.

Q. Was there one before that?

A. There were a number of meetings, two in London in January and March, one in Athens, one in Geneva, Switzerland.

Q. Did you attend those meetings?

A. I did not. I attended the two in London.

Q. You attended the two in London?

A. Yes.

Q. And those preceded the date of the formation of the International Maritime Workers Union?

A. Yes.

Q. In the course of these meetings was one of the items

under consideration and discussion the question of Panlibhon or runaway vessels?

A. That was practically the entire purpose of the two meetings.

Q. Can you tell us how the name "Panlibhon" is derived? How was it obtained?

A. It is derived from the first letters of the countries of Panama, Liberia, Honduras.

[fol. 288] Q. Is there anything unusual about these countries so far as the maritime industry is concerned?

A. These are the countries commonly known as the flags of convenience.

Q. What does that mean, Mr. Wall?

Mr. McAllister: Your Honor, I object to this.

The Court: I will allow that. I think we might get a little instruction about the maritime industry.

Mr. Ostrin: I think it is background, your Honor.

A. These countries register vessels for a fee and for other commitments, whose vessels are not necessarily owned by the Nationals of that particular country.

Q. In other words, Nationals of other countries register their vessels in either of these three countries, Panama, Honduras, Liberia, is that correct?

A. That is correct.

Q. Was there any action taken at the meetings of the I. T. F. where you were present concerning jurisdiction of Maritime Unions over these so-called Panlibhon vessels?

A. Yes. In the two meetings in London, in the early part of 1959, a policy was adopted, awarding jurisdiction to the Trade Union center in the country where the ownership and/or effective control of the vessel was vested.

Q. Were the American Unions awarded jurisdiction over Panlibhon vessels which regularly operate between American ports and foreign ports?

A. Yes, they were.

Q. Was it after this award of jurisdiction to the American Unions that the International Maritime Workers Union was formed?

A. Yes.

[fol. 289] Q. Mr. Wall, how long have you been a member of the International Maritime Workers Union?

A. Some 15 years.

Q. And how long have you held office in the National Maritime Workers Union?

A. Very close to ten.

Q. And your present office is vice-president?

A. That is correct.

Q. In your capacity as an officer of the National Maritime Workers Union, have you engaged in collective bargaining negotiations with ship owners having contracts with the N. M. U.?

A. Yes, I have.

Q. Can you tell us, Mr. Wall, what, if any, effect these Panlibhon vessels have had and do have upon American flag vessels having contracts with American seafaring unions?

A. These vessels are in the main in direct competition with the vessels that we have under contract and constantly in negotiations the ship owners' spokesmen, refer to the conditions in the industry, refer to the competition of the foreign shipping interests, and refer specifically to the runaway flags, the competition.

Q. What effect have these Panlibhon vessels which are in competition with American flag vessels under contract to the N. M. U. have upon the wages, hours, and working conditions of American seamen?

A. They tend to put a limit upon the heights at which we can negotiate, the amount of money.

Q. What effect has it had upon the jobs of American seamen?

A. We have lost many jobs.

Q. How?

A. Through the transferring of American vessels to these foreign flags, vessels that were formerly under contract to the National Maritime Union and the Seafarers.

[fol. 290] Q. Are the purposes for the formation of the Maritime—

Mr. McAllister: Your Honor, I do object to an inquiry which has no relevance here. There is no indication what-

soever in the record that these vessels in question have ever been under the American flag.

The Court: I was about to ask that question.

Mr. Ostrin: The witness testified—

The Court: Were the Nassau and Victoria ever under the American flag?

The Witness: Not to my knowledge.

Mr. McAllister: Your Honor, the record shows they were not. They were under the British flag and never under the American flag.

The Court: Yes.

Mr. Ostrin: I was about to say, your Honor, that the witness has testified that a Panlibhon vessel is one whose flag of registry has no connection, no substantial connection with the country of ownership.

Mr. McAllister: Let the witness testify, rather than Mr. Ostrin.

Mr. Ostrin: No, he testified to that.

Q. Mr. Wall, are the purposes for the organization of the International Maritime Workers Union set forth in the preamble of the I. M. W. U. constitution?

A. Yes, they are.

Mr. Ostrin: With the Court's permission, may I read into the record the preamble?

The Court: You are only wasting time. This is marked [fol. 291] as an exhibit. I am reading it now, so I don't think you have to read that.

Mr. Ostrin: All right.

The Court: In fact, I have read it twice.

Q. You know that the plaintiff vessels operate regularly between New York and the Caribbean islands, right?

A. Yes.

Q. Are there any shipping companies under contract to the N. M. U. which are engaged in the same trade and traffic?

A. I can recall two, the Grace Line and Moore, McCormack.

Q. Does the Grace Line operate a regular passenger cruise business between New York City and other American ports, and the Caribbean?

A. Yes, it does.

Q. Do you know the names of the vessels that are engaged in that traffic?

A. The *Santa Paula* and *Santa Rosa*.

Q. Do you know whether the wage rates of the members of the crews of the *Nassau* and *Victoria* are on a par with the wage rates of the seamen who work on the *Santa Paula* or the *Santa Rosa?*

A. I know that they are not on a par.

Q. Is there a differential?

A. Yes.

Q. Is it a substantial one?

A. Yes. I would say that an A. B. on an American ship gets approximately $360 a month as against $100 a month or less on a Panlibhon vessel.

Q. The Panlibhon vessel you are referring to now is the Incres Line vessels, is that right?

A. Right.

Q. What about the other conditions of employment? What about overtime?

A. Overtime rates are entirely different—

[fol. 292] Mr. McAllister: Your Honor, I object to a comparison of the American scale with the scale of a foreign—

The Court: I don't think that is part of this case, Mr. Ostrin.

Mr. McAllister: I don't think it is at all, your Honor.

Mr. Ostrin: May I be heard on that?

The Court: We are not discussing the question of whether the aims, purposes, and ambitions of the I. M. W. U. are laudable or not. That is not the question before the Court. The question here is whether or not these people have a right to picket and strike and hold up these vessels.

Mr. Ostrin: May I be heard on that, your Honor?

The Court: Yes.

Mr. Ostrin: I submit that this line of inquiry is relevant to show that there is, in fact, a labor dispute between the International Maritime Workers Union and the Incres Steamship Company, which involves not only the wages, hours, and working conditions of the unlicensed personnel

aboard the *Nassau* and the *Victoria*, but also has a direct effect upon the wages, hours, and working conditions of American seamen who are employed aboard vessels, American flag vessels, in direct competition with the Incres Lines, and that this dispute is very much a dispute between an American union on behalf of American seamen, with a Panlibhon vessel, namely, a vessel flying the flag of a country that has no substantial connection with the country of ownership.

[fol. 293] I submit that this is relevant, your Honor, because if allowed to offer this kind of testimony in the record, this case will fall, and does fall, clearly within the holding of the Marine Cooks & Stewards case. In Marine Cooks & Stewards, the Court held, quite properly, we believe, that there was a labor dispute between American unions and a foreign company, which dispute affected the wages, hours, and working conditions of American seamen, and I propose through this line of inquiry to adduce evidence which will establish, I believe, that here, too, quite apart from the internal economy of the *Nassau* and the *Victoria*, that we have a very serious labor dispute between an American union and a foreign company affecting directly the wages, hours, working conditions and jobs of American merchant seamen.

The Court: The only answer to that that I can think of is that this is not an American union in the sense that we understand it, because by that very preamble it only refers to seamen who work on ships under registry where the ships are not owned substantially by the country of registry. So how do you refer to this as an American union?

Mr. Ostrin: Your Honor, I refer to this as an American union because it was formed and organized by two American unions. Its principal officers are American seamen. It has presently members who are American seamen, and it is formed for two purposes: one, to improve the wages, hours, [fol. 294] and working conditions of seamen employed aboard Panlibhon vessels, and, two, to protect the wages, hours, and working conditions of American seamen and to protect their jobs.

This union, and if evidence is necessary on this, we propose to establish that this union has filed its constitution

and other documents with the Department of Labor under the provisions of the Landin-Griffin Act, that it is required to report to the Department of Labor concerning its finances, its method of operations, and so on, regularly to the Department of Labor, and that this union is very definitely formed and established to protect the interests of American seamen.

The Court: It doesn't say that in the preamble. It says, "Therefore, this union has been formed to improve and protect the wages, hours, and working conditions of all seamen employed aboard vessels whose flags are foreign to the United States of America, and whose ultimate ownership and control has no substantial connection with the country of registry."

Mr. Ostrin: There is more to that preamble than that, your Honor.

The Court: I know there is another sentence, but that is the meat of it. This union is not interested in American seamen, because American seamen are not employed on this Panlibhon, whatever you call it—

Mr. Ostrin: I respectfully must differ with your Honor. Your Honor, as this witness has testified, American mari- [fol. 295] time unions have long been concerned with the operation of these Panlibhon vessels, because they have had a direct effect upon American wages, hours, and working conditions. This witness has testified that the American seamen have lost jobs by reason of transfer of vessels to Panlibhon registry. This union in the interest—and this has been made clear—it is the avowed purposes of this union, and it is a matter of public knowledge, it had been used in connection with the Afran case and others—the sole purpose of this union is to protect American wages, hours, and working conditions in the only way it can do it—

The Court: Show it to me in this document, to support what you are saying.

Mr. Ostrin: The preamble reads as follows:

"The history of maritime labor conclusively demonstrates that only through union organization can merchant seamen achieve the dignity and well-being that is the natural right of working men. Decent wages, fair treat-

ment, vastly improved working conditions, job security, pension, and welfare benefits, and the inspiration of united brotherhood are only some of the advantages organized seamen now enjoy as a direct achievement of strong and energetic maritime unions. To retain and enlarge these benefits"—I submit that this refers to benefits that have already been achieved and gained and won—"to retain and enlarge these benefits and to extend them" (the same benefits, if I [fol. 296] may interpolate, which were achieved by American seamen unions for American seamen) "to those unfortunate seamen who do not now partake of them, is the self-evident obligation of the established maritime unions. Direly in need of assistance are those seamen presently employed on runaway flag vessels, who are victimized by absentee ownership (that is this case here, absentee ownership) and other nefarious practices designed to depress labor standards (what kind of labor standards can we be talking about, your Honor, if not the labor standards of the members of the two unions that form this organization?)—designed to depress labor standards and thwart and limit national organizational aspirations."

Then the next paragraph:

"Like its shore side counterpart, the runaway ship is a device for eluding legitimate unionization and profiting from the weakness of the unorganized. Ship operators whose vessels fly self-styled flags of convenience have too long avoided the obligation of bargaining collectively with freely chosen representatives of their employees. As a consequence thousands of seamen are being denied human dignity, fair wages, decent working conditions, and other rights and benefits currently available to the legitimately organized portions of the industry."

The Court: Mr. Wall, a seamen who is employed, who is an American citizen on the S/S *American*, can he join this Union?

The Witness: Yes, he could.

The Court: Under your Constitution?

[fol. 297] The Witness: Yes.

Mr. Ostrin: Definitely.

The Court: Then you have to express it in more clearly defined language, because it certainly does not say so.

By Mr. Ostrin:

Q. Who were the forming members of this organization, Mr. Wall?

A. Officers and members of the National Maritime Union and Seafarers International Union.

Q. Are they all members of their respective Unions?

A. Yes.

Q. The NMU and the SIU?

A. Yes.

Q. Are they all citizens of the United States?

A. Yes.

The Court: Are they members of this Union?

The Witness: Yes.

The Court: They are members of this Union?

The Witness: Yes.

Mr. Ostrin: Yes.

The Court: Go ahead.

Mr. Ostrin: Then may I refer your Honor to Article 4 on Membership—

The Court: Mr. Ostrin, I should not ask questions because it takes up so much time. It is easier for me to allow you to go ahead with your examination than to ask questions. Go right ahead, sir.

Mr. Ostrin: May I also refer to Article 4 of the Constitution?

The Court: All right, go ahead.

Mr. Ostrin: Which deals with membership eligibility:

[fol. 298] "All seamen, regardless of race, color, creed or nationality, shall be eligible for membership upon such uniform and nondiscriminatory terms and conditions as may be determined, provided, however, that members, supporters, or sympathizers of Communists, Fascists, Nazi or any other subversive organization shall not be eligible to seek or hold membership in the Union."

I submit to your Honor—

The Court: You had better go ahead and ask questions. Don't submit, please, counselor.

Mr. Ostrin: All right.

By Mr. Ostrin:

Q. Is it your testimony, Mr. Wall, that the wages, hours and working conditions of seamen employed aboard the S/S *Nassau* and *Victoria* depress and have a tendency to depress the wages, hours and working conditions of American seamen?

A. Yes.

Mr. McAllister: Your Honor, I object to that question. I think this is wholly irrelevant. This kind of argument and discussion may properly be held before the Congress, which provides operating differentials to protect the wage scales of American seamen—

The Court: All right. Sustained. Exception.

Q. Mr. Wall, does the operation of—withdrawn.

Does the operation of the *Nassau* and *Victoria* by the Incres Steamship Company have a tendency adversely to affect the job opportunities that American seamen have [fol. 299] aboard American flag vessels which operate in direct competition with the Incres Lines?

A. Yes.

Mr. McAllistjer: The same objection, your Honor.

The Court: The same ruling. Strike out the answer.

Q. Mr. Wall, as Executive Director of the International Maritime Workers Union, did you for yourself and your organizers at some time embark upon an organizational campaign amongst the seamen employed on the S/S *Nassau* and *Victoria?*

Q. When did you start that organizing campaign?

A. Either in late January or early February.

Q. Of what year?

A. 1960.

Q. Will you tell us how you went about organizing the members of the crews of the *Nassau* and the *Victoria?*

A. Two of our organizers, Mr. Ted Chimiklas and Reni Lionanjie, boarded the vessel at various times when it was in the Port of New York, contacted crew members ashore

and set forth the aims and objectives of the International Maritime Workers Union and secured pledge cards. That was the beginning.

Q. How long has this organizational campaign been running?

A. Since early February.

Q. Were you actively engaged in this organizational campaign during the month of April 1960?

A. Yes.

Mr. Ostrin: May I have this batch of cards marked for identification, please?

[fol. 300] (Batch of cards marked Defendants' Exhibit F for Identification.)

Mr. Ostrin: May I also have this marked for identification?

(Batch of cards marked Defendants' Exhibit G for Identification.)

Q. Mr. Wall, I show you Defendants' Exhibit F for Identification and ask you whether you will kindly identify that?

A. Yes. These are pledge cards made out by the International Maritime Workers Union and distributed to crew members of the *Nassau* in this particular case.

Q. Are the cards which are packed together as Defendants' Exhibit F for Identification pledge cards signed by members of the crew of the *Nassau*?

A. Yes. I believe all of these are the *Nassau*.

Q. Will you look at Defendants' Exhibit G for Identification and tell us what they are?

A. They are marked as pledge cards from the *Victoria*.

Q. Were Defendants' Exhibits F and G for Identification, if you know, filed with the National Labor Relations Board at the request of the National Labor Relations Board?

A. Yes, they were.

Mr. McAllister: Your Honor I object to that.

The Court: Yes. Sustained. Exception.

Mr. Ostrin: I offer Defendants' Exhibits F and G for Identification in evidence.

Mr. McAllister: Your Honor, I object to the offer in evidence of these pledge cards. They have no relevance here whatsoever.

The Court: Sustained. Exception.

[fol. 301] Mr. Ostrin: May I make an offer of proof, your Honor, that on the back of pledge card is stamped "N.L.R.B., Section Region, New York, 1960, May 19, 1:47 P.M." Those are the pledge cards dealing with the *Nassau*. And that on the reverse side of each of these pledge cards there is stamped "National Labor Relations Board, Second Region, New York, dated May 19, 1960, 1:53 P.M."

May I also make an offer of proof that these pledge cards which have been marked for identification as Defendants' Exhibits F and G have been submitted and filed with the Second Regional Office of the National Labor Relations Board pursuant to its request following the filing of an unfair labor practice charge by the International Maritime Workers Union against the Ineres Steamship Company?

May I also make an offer of proof that the National Labor Relations Board, Second Region, is presently investigating the unfair labor practice charge to which I have referred and that in connection with that charge has requested Defendants' Exhibits F and G for Identification?

Also, may I make an offer of proof that these cards have been made available to us this afternoon by the National Labor Relations Board for the purposes of this hearing?

Mr. McAllister: Your Honor, we object to this whole line of proof as irrelevant.

The Court: Sustained.

[fol. 302] Your record is protected now, Mr. Ostrin.

Mr. Ostrin: That is all I am trying to do, your Honor.

By Mr. Ostrin:

Q. Mr. Wall, after you had engaged in this organizational campaign, did you have any meetings or discussions with any representative or representatives of the Ineres Steamship Company?

A. I met with Mr. Berlingeri.

Q. Do you recall when for the first time you met with Mr. Berlingeri?

A. April 13th at 39 Broadway.

Q. Was this meeting by pre-arrangement?

A. Yes, it was. It had been arranged through conversations aboard the *Victoria* or *Nassau*.

Q. Had you spoken with Mr. Berlingeri aboard either the *Nassau* or the *Victoria* prior to the meeting?

A. I had not, but the organizers had.

Q. Then they told you that there was a meeting arranged with Mr. Berlingeri?

A. Yes.

Q. Who was present at this meeting with Mr. Berlingeri?

A. The same two organizers that have been mentioned and a William Perry from the NMU and myself.

Mr. McAllister: I would like to have marked the notebook that Mr. Wall is consulting in connection with his testimony here.

The Court: Not at this time. He has a right to use any document he wishes to refresh his recollection. Later on you may call for its production.

Q. Who was present, sir?

A. Mr. Berlingeri, Mr. Perry from the National Mari- [fol. 303] time Union, the same two organizers, Chimiklas and Lioanjie, and myself.

Q. Can you tell us what was said?

The Court: Will you excuse me for a minute until I sign a few papers?

(There was a brief interruption at this point.)

Mr. Ostrin: Will you read the question?

(The pending question was read by the reporter.)

Q. (Continuing) At this first meeting with Mr. Berlingeri?

A. A number of things were discussed. We informed Mr.—

Q. Were you the spokesman, by the way, for the I. M. W. U.?

A. Yes. We informed Mr. Berlingeri that we represented a substantial number of crew members on the *Nassau* and

Victoria and that we were desirous of entering into collective bargaining negotiations and the discussions took place around this. He expressed some concerns or some questions from his side and we and we attempted to—

Q. Mr. Wall, instead of saying he expressed concern, which is a conclusion, will you tell us what he said?

A. He said that he was afraid if the employees of his two vessels joined an American Union, they would become involved in sympathy strikes with the Americans—

Q. By the way, did he refer to the I. M. W. U. as an American Union?

A. Yes.

Q. He referred to it as an American Union, right?

A. Yes.

Q. All right.

A. He expressed the fear or stated that a demand for [fol. 304] American wages would tend to drive him out of business, and he could not pay American wages and conditions. He wanted to know if each time the vessel came in, if the organizers would be aboard the vessel, and if he had to answer to the organizers.

Q. This is assuming that there was a contract with your Union, is that how these questions came about?

A. This was even prior to the contract.

Q. All right.

A. We answered from our side that the question of strikes was usually entered into agreements, that we had provisions for no strikes in the contracts, and that it was certainly not our purpose to drive him out of business, and that on the question of grievance procedures, we would be glad to work out a grievance procedure so that the grievances would be handled long before they reached his office.

Q. Did you give him an idea as to how grievances could be handled on a ship?

A. Yes, we did, and we submitted language covering that.

Q. By the way—

Mr. McAllister: Your Honor, I have been listening to this, and at this point I would like to object to this whole line of proof as to the discussions between these parties on

this subject. It seems to me to be irrelevant to any issue that is before this Court with respect to this picketing.

The Court: That is what I think, in line with my earlier disposition. What you are attempting to do here, Mr. Ostrin, it is quite clear to me, is to build up a case that will fit into the pattern of *Marine Cooks* and *Stewards*.

Mr. Ostrin: I think we have a right to do that, your Honor.

[fol. 305] The Court: You have a right to do that if it is a fact, but up to now—

Mr. Ostrin: I think it is, but, apparently, we are not being permitted to develop that, your Honor. I respectfully submit that this does fall within the Marine Cooks and Stewards case and that we should have the right to adduce evidence which would show that conditions aboard these vessels have an adverse effect upon the conditions of employment of American seamen as well as the conditions of employment of these seamen.

Mr. McAllister: Your Honor—

The Court: I will sustain the objection. Exception.

Mr. Ostrin: Do I take it then that your Honor will sustain all objections to this line of inquiry?

The Court: Yes.

Mr. Ostrin: Well, then, may I make the following offer of proof: I propose to prove further through this witness that at the meeting of April 13th between Mr. Wall and Mr. Berlingeri that following Mr. Wall's representations that the I. M. W. U. represented a majority of the seamen employed aboard the *Nassau* and *Victoria* and without challenging the I. M. W. U.'s majority status, Mr. Berlingeri stated that he knew that representatives of the I. M. W. U. had been active among the crew, that he had no objections to I. M. W. U.'s processing grievances on behalf of the crews, and that he requested merely that I. M. W. U.'s representatives when boarding the vessels first announce [fol. 306] themselves to the Masters.

I further offer to prove through this witness that at the same meeting, April 13th, while Mr. Berlingeri recognized the I. M. W. U. for the purpose of processing grievances, he expressed himself as being reluctant to enter into a

formal contract with the I. M. W. U. because of his apprehension of high American wages.

I also propose to prove through this witness that at the same meeting Mr. Berlingeri stated to Mr. Wall that he preferred to deal with an Italian Union and that he would be willing to negotiate an agreement with an Italian Union that the I. M. W. U. could then administer.

I further propose to prove through this witness that when this offer was made by Mr. Berlingeri it was promptly rejected by Mr. Wall.

I further propose to prove through this witness that another meeting was had with Mr. Berlingeri at his office on May 4, 1960, at 39 Broadway, during which meeting Mr. Wall again pointed to the fact that the I. M. W. U. represented a majority of the seamen employed aboard the *Victoria* and the *Nassau*, and that again at this meeting Mr. Berlingeri, without challenging the majority status of the I. M. W. U., unequivocally stated that he preferred to deal with an absentee Italian Union.

I further propose to prove through this witness that the meeting adjourned with the understanding that Mr. [fol. 307] Berlingeri would contact Mr. Wall further during the week but no later than May 10, 1960.

I further propose to prove through this witness that he heard nothing from Mr. Berlingeri on May 10, 1960, and that on May 13th, not having heard anything from Mr. Berlingeri, the Union elected to picket the S/S *Nassau* upon its arrival in New York with the picket sign that is now in evidence as Defendants' Exhibit D and D-1.

In connection with this offer of proof I would like to have marked for identification certain exhibits.

Mr. McAllister: Your Honor, would it be more orderly if Mr. Ostrin broke up his offer of proof? I mean up to this point we would object to it, but there may be other features of it—

The Court: He is just about to introduce some documentary evidence.

Mr. McAllister: I see. At least for the record, then, if Mr. Ostrin has completed his offer of proof, we would object to this whole line of questioning.

The Court: I have already sustained the objection.

Mr. McAllister: Up to the point of the strike itself, of course.

The Court: Yes.

Mr. Ostrin: I would like to have marked for identification copy of a letter addressed to Mr. Berlingeri under date of April 25, 1960, and following that another letter to Mr. Berlingeri under date of April 29, 1960.

(Two letters marked Defendants' Exhibits H and I for Identification.)

[fol. 308] Mr. Ostrin: May I have the witness identify both of these letters, please?

By Mr. Ostrin:

Q. Tell us what Defendants' Exhibits H and I for Identification are?

A. The letter of April 29th is a formal request to meet with Mr. Berlingeri for purposes of collective bargaining. The April 25th letter is a letter that preceded that. It was just simply a letter to meet, that we have discussed various factors of our first meeting with the crew, and that we would like to have a second meeting. The April 29th letter followed when there was no reply to the letter of the 25th.

Mr. Ostrin: I offer both of those in evidence.

Mr. McAllister: Your Honor, we regard these two letters as irrelevant but in the interest of saving time I have no objection to them.

The Court: All right, Mark them in evidence.

(Defendants' Exhibits H and I for Identification received in evidence and marked Defendants' Exhibits H and I.)

The Court: We will take a brief recess.

(Brief recess.)

(After recess.)

[fol. 309] SHANNON J. WALL resumed the stand and testified further as follows:

Mr. Ostrin: May I now have this telegram marked for identification, please?

(Telegram marked Defendants' Exhibit J for Identification.)

By Mr. Ostrin:

Q. Mr. Wall, I show you Defendants' Exhibit J for Identification and ask you what it is and whether or not you received it?

A. This is a wire from Mr. Berlingeri of the Ineres Line in which he says that he is—

Q. What is the date of the telegram?

A. The date is April 29, 1960.

Q. Is it addressed to you?

A. It is addressed to me.

Q. Did you receive it?

A. I received it.

Mr. Ostrin: I offer it in evidence.

A. (Continuing) He says it is agreeable to meet.

Mr. McAllister: Your Honor, we object to this whole line of the negotiations between the parties here.

The Court: I have sustained your objection. But you said some of the things you might permit to go into evidence.

Mr. McAllister: Your Honor, I didn't know that this was going to be a long line of documents, and so I will object to this one.

The Court: Sustained. Exception.

Mr. Ostrin: May I now have this telegram marked for Identification.

[fol. 310] (Telegram marked Defendants' Exhibit K for Identification.)

By Mr. Ostrin:

Q. I show you Defendants' Exhibit K for Identification and ask you what that is, whether you received it and what the date of it is.

A. The telegram is dated May 13th. It is addressed to me as Executive Director of the International Maritime Workers Union, 65 West 14th Street. It acknowledges receiving a telegram from me and it is simply signed "Incres Line."

Mr. Ostrin: I offer it in evidence.

Mr. McAllister: The same objection, your Honor.

The Court: The same ruling.

Mr. Ostrin: May I have this marked for identification.

(Telegram marked Defendants' Exhibit L for Identification.)

Q. I show you Defendants' Exhibit L and ask you to identify that, Mr. Wall?

A. This is a wire from Mr. Berlingeri via McKay Radio from the S/S *Victoria* at sea addressed to Marworker, the cable address of the Maritime Workers Union, in which he states he is returning Sunday and will contact—

The Court: He just asked you to identify the telegram.

The Witness: All right.

Mr. Ostrin: I offer it in evidence.

Mr. McAllister: Objection.

The Court: Same ruling.

[fol. 311] Q. Mr. Wall, did you meet with one of the attorneys for the Incres Steamship Company on the afternoon of May 13th?

A. Yes.

Q. Where did that meeting take place?

A. At the offices of Cooper, Ostrin & DeVarco.

Q. That is our office?

A. That is your office.

Q. Do you know the name of the attorney with whom you met?

A. Mr. Stevenson.

Q. In the course of the meeting did you have occasion to speak with Mr. Wolfson?

A. Yes, I did, by telephone.

Mr. McAllister: I object to this whole line of questions, your Honor.

The Court: I think so. Sustained.

Mr. Ostrin: In view of your Honor's ruling, may I at this time make a further offer of proof? The offer is as follows:

That on Friday afternoon, May 13th, Mr. Wall met with a Mr. Stephenson of the firm of Gray & Wythe, the then attorney for the Ineres Steamship Company, at my office, and in the course of the meeting which lasted some several hours there were several telephone conversations between Mr. Wall and Mr. Wolfson, the President of Ineres, that in the course of these telephone conversations Mr. Wolfson asked Mr. Wall whether he would agree to withdraw the picket line if Mr. Wall were to be assured by Mr. Berlingeri, then a passenger on the *Victoria*, which was at sea on the way in to New York, that promptly upon arrival of the *Victoria* in New York Mr. Berlingeri would commence negotiations in good faith with the I. M. W. U. for [fol. 312] a collective bargaining agreement on behalf of the unlicensed non-supervisory personnel employed on the *Nassau* and *Victoria*, that these assurances would be subject to any valid collective bargaining agreement between the Italian Union and the Company, if, in fact, one existed, that in the course of this proposal Mr. Wolfson indicated that if on the basis of the proposal Mr. Wall would withdraw the picket line, there would be no reprisals against the members of the crew; that Mr. Wall, after much discussion both with Mr. Wolfson and Mr. Stephenson finally agreed that such a radiogram would be sent to Mr. Berlingeri, and that, in point of fact, that radiogram, or a radiogram incorporating the proposals of Mr. Wolfson was sent to Mr. Berlingeri who was then aboard the S/S *Victoria*.

I would like, if I may, to call upon counsel to produce the original of that radiogram so that it might be marked

for identification and be offered in evidence as part of our record.

Mr. McAllister: Which radiogram was that, Mr. Ostrin? I am sorry, I didn't get that.

Mr. Ostrin: That was a radiogram sent to Mr. Berlingeri aboard the M/S *Victoria* at sea in the Caribbean on the evening of May 13, 1960, and I would like you to produce that radiogram.

Mr. McAllister: Your Honor, we have no objection to producing it but it would be subject to the same objection that we make to the whole line.

[fol. 313] The Court: Let us have it produced first.

Mr. Ostrin: It is the radiogram, a copy of which is annexed to Mr. Wall's affidavit as Exhibit C.

Mr. McAllister: What was the date of that, Mr. Ostrin?

Mr. Ostrin: May 13th.

Mr. McAllister: Is this it (handing paper to counsel)?

Mr. Ostrin: Yes.

I would like to have it marked for identification.

(Radiogram of May 13, 1960 marked Defendants' Exhibit M for Identification.)

Mr. McAllister: I understand this is part of your offer of proof, Mr. Ostrin, is that correct?

Mr. Ostrin: Yes.

Mr. McAllister: You have not yet completed your offer of proof?

Mr. Ostrin: No.

By Mr. Ostrin:

Q. Mr. Wall, I show you Defendants' Exhibit M for Identification and ask you whether that is the radiogram to which I have just referred?

A. Yes, it is.

Mr. Ostrin: I offer it in evidence.

Mr. McAllister: Is that offered as part of the offer of proof?

Mr. Ostrin: Yes, it is.

Mr. McAllister: The same objection, your Honor.

The Court: The same ruling.

[fol. 314] Mr. Ostrin: I further offer to prove through this witness that at or about midnight or shortly prior thereto on May 13th Mr. Berlingeri replied to Defendants' Exhibit M for Identification accepting Mr. Wall's proposals with the proviso that he would negotiate with the I. M. W. U. if the ITF were to grant it jurisdiction at the forthcoming meeting of the ITF in London.

Mr. McAllister: Your Honor, we renew our objection.

Mr. Ostrin: It is an offer of proof.

Mr. McAllister: And we object to it.

The Court: The same ruling. Sustained.

Mr. McAllister: On the same grounds.

The Court: Sustained.

Mr. Ostrin: This is part of my offer of proof, your Honor.

And as further part of my offer of proof, I refer to Exhibit B attached to Mr. Wall's affidavit verified the 17th day of May 1960, which is a radiogram addressed to the National Maritime Union by the Secretary of ITF on May 16th, I think it is, confirming that the jurisdiction for vessels Nassau and Victoria should be with the United States Maritime Union.

Mr. McAllister: Your Honor, I object again and I would like to ask that this whole proffer of proof be terminated. It is all the same thing. It is a line that the Court has ruled on a dozen times already and Mr. Ostrin persists in continuing with it. It seems to me the principle has been established by this Court.

The Court: I cannot stop him from making an offer of proof to protect his record.

[fol. 315] Mr. Ostrin: That is all I am doing, your Honor, all I am attempting to do.

I further offer to prove through this witness that meetings were held between him and Mr. Berlingeri on Monday, May 16, and thereafter, concerning the union's demands for recognition and a collective bargaining agreement, and that one meeting was held as recently as Wednesday, May 18th, following the session in court.

I further propose to prove through this witness, or offer to prove through this witness that Mr. Berlingeri in

the late afternoon or early evening of Wednesday, May 18th, informed Mr. Wall that he would give him the company's answer with respect to the union's demand for recognition and a contract after ten o'clock on the morning of the following day, which would be Thursday, May 19th, I believe the morning, and which your Honor was to rule on defendant's motion to dismiss the proceedings for lack of jurisdiction. This was a promise which was given to Mr. Wall on Wednesday evening, and following your Honor's ruling with respect to the motion to dismiss on Thursday morning of last week, which was May 19th, I believe, Mr. Wall heard nothing further from Mr. Berlingeri.

Mr. McAllister: The same objection, your Honor.

The Court: The same ruling.

Mr. Ostrin: May I just have a moment, your Honor?

The Court: Yes.

[fol. 316] Mr. Ostrin: That is all I have of this witness, your Honor.

Cross examination.

By Mr. McAllister:

Q. Mr. Wall, who is the treasurer of the International Maritime Workers Union?

A. Who is the treasurer?

Q. Yes.

A. There is none as such.

Mr. Ostrin: Objection as being immaterial and irrelevant. The question of service has already been ruled upon by your Honor.

The Court: All right; sustained.

Q. Are there any officers other than the three officers listed in Article 5 of your charter, to wit, the two co-chairmen and the executive director?

A. No, sir.

Mr. Ostrin: Objection.

The Court: I will allow that.

Mr. Ostrin: The document speaks for itself.

The Court: I will allow it.

Q. Mr. Wall, you use the expression, "Runaway Ships." Is that correct?

A. Yes.

Q. What do you mean by that?

A. A vessel that is running away from the country of ownership, from the responsibility of the country of ownership.

Q. Take these two vessels with which we are here concerned. Were they ever under the American flag?

Mr. Ostrin: He answered that. I think he said no.

[fol. 317] The Court: He said before they were not.

Q. So they didn't run away from the American flag?

A. They did not.

Mr. Ostrin: Objection, on the ground that it is argumentative.

The Court: It is not argumentative.

Mr. Ostrin: He has already testified that it had no connection with the country of ownership. I submit that answers it.

The Court: All right.

Q. Mr. Wall, when you undertook to organize the crews of these two vessels, did you know the ownership of these vessels?

A. Not clearly, no.

Q. Did you make any inquiry into the ownership of these vessels?

A. Yes, we have.

Q. What inquiry did you make?

A. To the limited resources that we have, we have inquired of the owners themselves. We have gone to Lloyd's Registry. We have looked at the articles, the Bank of American loans, and so forth, and we have not gotten much beyond what has been testified here, that Mr. Berlingeri is the president and that there are other interests.

Q. When did you commence your inquiry into the ownership of these vessels?

A. When we first started boarding them, when we were approached by the crew, we initiated our inquiries.

Q. In understood that you testified that you commenced your efforts to organize these crews in February?

A. That is correct.

Q. Is that correct?

A. Yes.

Q. What inquiry had you made prior to the commencement of your efforts at that time?

A. None in February.

[fol. 318] Q. None whatsoever?

A. No.

Q. What did you think the ownership to be?

A. I had no thoughts on it. The vessel was trading between New York and the Caribbean on a constant cruise, and the men came to see us. Our organizers went aboard. We found conditions that we thought made it ripe for organizing. We started our organizational efforts.

Q. You knew the crew was wholly alien, however, did you not?

A. Yes, yes.

Q. I understood you to testify that one of the purposes of your union was to save the jobs of American seamen, is that correct?

A. That is correct.

Q. Did you have that in mind in your efforts to organize the crews of these two vessels?

A. Yes, we did.

Q. How did you propose to save the jobs of American seamen by organizing the alien crews of these two vessels?

A. We hoped to bring their wages and conditions up a great deal, or to the best of our ability, and thereby lessen the differential between the American seamen and the seamen aboard this vessel, or these vessels.

Q. How would that save jobs of American seamen?

A. We have found the vessels in the main transferring to foreign flags because of lower wages and conditions.

Q. And that deprives American seamen of jobs?

A. Correct.

Q. Did you know that these vessels had never been trans-

ferred from the American flag? That is already a matter of record here?

A. Did I know when we first made contact that they had not?

Q. Yes.

A. No. We knew that the vessel was —

[fol. 319] Q. Now that you have learned that these vessels have never been transferred from the American flag, and that they are foreign owned, as has been testified here, how do you propose to save jobs of American seamen with respect to these vessels?

A. I think it is clear we intend to raise the wages and conditions of these men.

Q. Of the alien seamen?

A. Yes.

Q. How does that protect the jobs of American seamen?

A. They are in direct competition with American vessels, the Grace Line in particular, and also to a lesser extent the Moore McCormack.

Q. I still don't understand, Mr. Wall, how that protects the jobs of American seamen, unless you simply pick these Italian seamen off these vessels and give the jobs to American seamen.

A. We feel that the organizing of unorganized vessels is the exact same thing as any man in the garment industry would organize an unorganized shop longside of him, that this protects the jobs and conditions of the unionized members.

The Court: Are you trying to say that if the wages of these alien seamen are brought up to the standard of American seamen, then there would not be a tendency on the part of any other owner of a ship to want to transfer his ship to a foreign flag?

The Witness: I think it would be less profitable for him to do that. And this is a long range program. This is not two vessels. These two vessels are part of a number of vessels.

The Court: Of course, as far as these two vessels were concerned, they didn't cost American seamen their jobs, because these ships were never under the American flag, and [fol. 320] never hired American seamen, isn't that correct?

The Witness: I don't know whether the Grace Line, who is their direct competitor, whether they would have another vessel in competition if they didn't have these two. They might have two more vessels in their run. Incres is running pretty much to capacity in passengers. There must be a need for Americans to travel to the Caribbean. If it was not profitable for them to be there, if their differential was not as great, perhaps Grace Line or other American companies would participate to a greater degree in this Trade Route 4, the essential trade route so designated by the Maritime Commission.

Q. There would be more jobs then, Mr. Wall, if the Incres Line was not in this business at all?

A. Well, I am not in the steamship business. I am only a union official. But I assume with Incres Line running to near capacity in passenger trade, that if they were not in this business, there was room for someone else, more vessels.

Q. American flag vessels?

A. Presumably.

Q. So it would be to your advantage if the Incres cruise ships were not in this business?

A. It would be—

The Court: That is all he is saying.

A. (Continuing) It would be to our advantage if there were no other ships but American, yes.

The Court: I tried to protect you, but you wouldn't let me.

[fol. 321] Mr. McAllister: No further questions, your Honor.

Mr. Ostrin: I have just one or two questions, your Honor.

Your Honor, I am trying to check to see whether the translation of Defendants' Exhibit A was actually received in evidence. I know that Exhibit A was. That is a letter that was circulated amongst the members of the crew. Before we close this hearing, I want to make sure that the translation which was handed up, has been given a number.

I don't seem to find it here. If you will bear with me, we can check it.

The Court: All right.

Mr. Ostrin: Apparently it was marked as A-1, but it seems to have gotten lost. I wonder whether we can have another copy marked as Defendants' Exhibit A-1, and then have it received in evidence as a translation of Defendants' Exhibit A?

Mr. McAllister: No objection, Mr. Ostrin.

(Letter received and marked Defendants' Exhibit A-1.)

Redirect examination.

By Mr. Ostrin:

Q. Mr. Wall, did the I. M. W. U. file an unfair labor practice charge against the Incres Line on May 16th?

A. Yes, we did.

Mr. McAllister: Your Honor, I object to this line of questioning, about filing charges with the National Labor Relations Board.

The Court: Yes. Sustained.

Mr. Ostrin: It is merely an offer of proof that the I. M. W. U. filed d unfair labor practice charge against [fol. 322] the company with the Second Region of the National Labor Relations Board on May 16th. Copy of that charge is annexed as an exhibit to Mr. Wall's affidavit in answer to the motion for a preliminary injunction.

The Court: All right.

Mr. McAllister: I make the same objection.

The Court: The same ruling. Sustained.

Mr. Ostrin: I would like, your Honor, to request Mr. McAllister whether he would stipulate that the document which I hold in my hand was distributed by the company to members of the crew. I would like to have it marked for identification, sir.

(Document marked Defendants' Exhibit N for identification.)

Mr. McAllister: Your Honor, I am unable to stipulate that. This document is written in Italian.

Mr. Ostrin: May we have the interpreter?

Mr. McAllister: Maybe you can tell me what it is, Mr. Ostrin.

Mr. Ostrin: Well, the gist of the article, or the part that I am interested in most is a report to the members of the crews of both the *Nassau* and *Victoria* that in the course of these proceedings I, as attorney for the I. M. W. U., argued that one of the reasons for the I. M. W. U.'s attempt to organize these vessels is to preserve the wages, hours, working conditions, and jobs of American seamen. I am going to offer this leaflet in evidence, if Mr. McAllister [fol. 323] doesn't want to stipulate, after a foundation is laid for it, to establish that the company is reporting to the members of its crews that one of the main reasons we are organizing the crew members of the *Nassau* and *Victoria* is to preserve American wages, hours, and working conditions and to protect American jobs for American seamen. I want to show that this is not only a recognition by the company, but that the company is making this known to the members of its crews. I submit this bears on the Court's decision in the Marine Cooks & Stewards, and I would like very much to have either the entire leaflet translated or those parts in which I am interested—

The Court: I cannot pass on anything in a foreign language, because I cannot read it.

Mr. Ostrin: We would like to have an interpreter here.

The Court: I think you had better get it translated. That is the best way to do it.

Mr. Ostrin: We can get it translated, either by the interpreter, or by an official translator. That is going to take time. I thought in the interests of expedition, just as Mr. McAllister called upon the court interpreter to read portions of the contract, we might do likewise with the court interpreter.

Mr. McAllister: Your Honor, may I just ask Mr. Ostrin, is this the translation of the statements made by him to this Court as they appear on pages 125 and 126 of the transcript of the record?

[fol. 324] Mr. Ostrin: No, we haven't gone into this at at all. I would like this translated. I have been informed,

—your Honor, I realize that this is not evidence—by one of the seamen that this leaflet was distributed amongst the members of the crews of the *Nassau* and *Victoria*, point out that one of the reasons the I. M. W. U. is seeking to represent these crews, is to protect American jobs, wages, and working conditions, and what have you. I am not testifying on that. I would like to get this translated, and get the correct translation.

If we were able to have the interpreter translate portions of the contract, at the request of Mr. McAllister, I see no reason why we can't do the same with this.

The alternative to that, if we were to submit this to a translating bureau, an official translating bureau, would be that it might take us 24 hours to have it translated.

The Court: Are you finished with your case when you finish with this witness?

Mr. Ostrin: I have one more witness.

The Court: We will see if we can get the interpreter down. I would like to finish this tonight, if I can.

Mr. Ostrin: I think we can, your Honor, because the next witness is going to be relatively brief.

The Court: All right. While we are locating the interpreter, why don't you put the next witness on.

Mr. Ostrin: Surely.

(Witness excused.)

[fol. 325] Edilio Sabbione, residing on the SS. *Nassau*, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Ostrin:

Q. Mr. Sabbione, are you a member of the crew of the S. S. *Nassau*?

A. Yes, sir, I am.

Q. In what department are you employed?

A. Steward department.

Q. How long have you been employed aboard the S. S. *Nassau* as a steward?

A. November 26, 1958.

Q. Right up to the present time?

A. Up to the present time—up to the strike.

Q. Are you a member of any Italian Union?

A. No, sir.

Q. Is there a contract between the Italian Union and the Incres Line covering the people on the *Nassau?*

A. Not that I know of, sir.

Q. How long have you been a seaman?

A. Well, since December 1, 1958, when we sailed from Italy.

Q. You were a seaman before 1958?

A. No, sir.

Q. Before the war?

A. No, sir.

Q. Do you know whether the Italian Union represents or undertakes to represent seamen who work on ships other than those which fly the Italian flag?

A. No, sir.

Mr. McAllister: Your Honor—

The Court: He may answer if he knows.

Mr. McAllister: If he knows, yes.

The Witness: No, sir.

The Court: You don't know?

The Witness: No, sir.

Mr. Ostrin: He says he does know.

The Witness: They do not represent Italian seamen on foreign ships with a foreign flag.

[fol. 326] Q. Is that correct?

Mr. McAllister: Your Honor, I move that that be stricken until his knowledge as to the facts be first established.

The Court: No. I will allow that. He is speaking as of his own knowledge.

Q. As far as you know, does the Italian Union represent anybody other than seamen who work on Italian flag ships?

A. No, it doesn't.

Mr. McAllister: I object.

The Court: I don't think—

The Witness: No, sir. The answer is no.

The Court: Objection sustained.

Do you belong to an Italian Union?

The Witness: No, sir.

The Court: An Italian Seaman Union?

The Witness: No, sir. Your Honor, may I plead for an Interpreter. I would like to speak Italian.

The Court: You are doing all right.

The Witness: Being in the court, you see, the meanings of words between Italian to English could have different expressions, as a difference in the feeling. So I would like to have the interpreter.

The Court: You are doing all right. We are expecting him down here. But I don't think you need an interpreter.

The Witness: If it is possible, I would be very glad—

Mr. Ostrin: What he is saying, as I understand it, is that the meanings of words in English might have a different connotation that he gets in Italian.

[fol. 327] The Court: Do you know what a Union is?

The Witness: Yes.

The Court: Do you know what a member of a Union is?

The Witness: Yes.

The Court: You say you are not a member of an Italian Seamen's Union?

The Witness: I am not a member of an Italian Seamen's Union.

By Mr. Ostrin:

Q. Do you know whether the members of your crew ever approached the Italian Union to represent them?

A. Yes, I do.

Q. What was the reply that was received from the Italian Union?

A. We ain't got no jurisdiction to all this Italian seamen working under foreign flag ships.

The Court: They said that to you?

The Witness: To me, yes, sir. I mean the members some crew members, not myself.

Q. Were you with a group, is that right?

A. Yes, I was with a group.

Mr. McAllister: May I ask the reporter to read that? I just didn't hear it.

The Court: And you heard the Italian Union Representative say that?

The Witness: No. I heard some of the crew members from the SS. *Nassau* that they— .

The Court: I will have to strike it out.

[fol. 328] Q. When did you learn about the International Maritime Workers Union?

A. Around the middle of the month of March, March 15, March—I don't know.

Q. How did you hear about it?

A. I read in the newspaper about the deal that we are on board between one of our fellows—he was a pastryman, a baker, you know. He was sick. They wouldn't recognize—

The Court: All right. We have the Italian interpreter.

(The balance of the witness' testimony was through an Official Italian Interpreter as follows):

By Mr. Ostrin:

Q. Did you see representatives of the International Maritime Workers Union come aboard your ship?

A. I saw one, a representative of the Union, the National Maritime Union.

Q. What was the representative of the International Maritime Workers Union doing on your ship?

A. He was bringing some newspapers and he was asking how are things.

Q. Can you identify the newspapers that he brought on the ship?

A. The Pilot.

Mr. Ostrin: Will counsel concede that the Pilot is the publication of the National Maritime Union?

Mr. McAllister: Indeed so.

Q. About when was this that you first saw a representative of the International Maritime Workers Union?

A. When I came in contact, in personal contact with

[fol. 329] one of these representatives was May 6th, 6th of May.

Q. Did you ever see any representative of the International Maritime Workers Union distribute pledge cards like these, and I show you Defendants' Exhibit F for Identification?

A. You mean that day?

Q. That day or any other day.

A. No, I did not.

Q. Did you sign a pledge card?

A. Yes, sir, I did sign.

Q. When did you sign?

A. The 4th of April.

Q. Do you know whether other people signed pledge cards in your presence?

A. Yes, sir, in my presence, yes.

Q. Were there many such people who signed them or a few?

Mr. McAllister: Your Honor, we object to this line of questioning about signing up pledge cards. The pledge cards themselves have been excluded and I regard this as subject to the same objection.

The Court: I think so. Sustained. Exception.

Q. Were there any difficulties on the ship sometime in the month of April?

A. Many difficulties.

Q. Will you tell us about them, please?

A. In order to relate them, I have to go back to January.

Q. Well, will you go back to January?

A. In the first 15 days of the month—

Q. The first 15 days of the month—

Mr. McAllister: Your Honor, I would like to renew the objection that has been made as to complaints and [fol. 330] difficulties, whatever they may be.

The Court: I will sustain the objection. Exception.

I am taking the position, and I either stand or fall on the position I take, or you win or lose by that position. The higher court will have to do some corrective work, either of you or of me.

Mr. Ostrin: Well, then, may I just make a very brief offer of proof.

The Court: All right.

Mr. Ostrin: I propose to prove through this witness that in or about the month of April 1960, there were a number of grievances aboard the SS. *Nassau* which stemmed from incidents occurring sometime in January, all involving some defective boiler which resulted in more overtime on the part of the members of the crew, with no compensation therefor.

Briefly, we offer to prove through this witness that because of this defective boiler the vessel arrived later in port and in the interest of a faster turn-around, so that the vessel might go back to the Caribbean, the members of the crew were required to work long hours of overtime without being compensated therefor.

I also propose to prove through this witness that the members of the crew of the *Nassau* were very desirous of being represented by the International Maritime Workers Union, that they signed pledge cards, that is, the majority of them did, that the crew had been informed of a pro-[fol. 331] posed meeting to be held on or about May 10th with Mr. Wall of the I. M. W. U. and Mr. Berlingeri of the company concerning the negotiations of a contract, and that this meeting was to be held while the *Nassau* was at sea.

I further propose to prove through this witness that the members of the crew at a meeting had decided that unless some definitive action were taken at this proposed meeting on May 10th or 12th, 1960, that the crew would strike, that they would walk off the ship; that the crew was no longer going to pay any attention to promises of negotiating, that the crew wanted recognition of the International Maritime Workers Union as its collective bargaining representative and wanted a contract in its behalf.

I further offer to prove through this witness that upon the arrival SS. *Nassau*—

(There was an interruption at this point.)

Mr. Ostrin: May I have the last part of my statement read.

Mr. McAllister: Your Honor, the offer of proof has been

rambling along covering many different topics, and I am wondering if it wouldn't make it more orderly if Mr. Ostrin would break it down as he goes along. There may be some features of this to which no objection will be made.

The Court: That would be desirable, if it can be done.

Mr. Ostrin: It is all right with me, your Honor, except it appears that this entire inquiry is being objected to [fol. 332] and the objections are sustained, but I can ask question for question.

Mr. McAllister: But, your Honor, there are times when the offer of proof deviates from the area of objectionable evidence, and we may—

The Court: Go ahead with your offer of proof.

Mr. Ostrin: What was the last thing I said?

(The following was thereupon read by the Court Reporter:

"I further offer to prove through the witness that upon the arrival of SS. *Nassau* the decision was made by the members of the crew to take some definitive action at the meeting of May 10th concerning union recognition, and that the members of the crew would refuse to work.")

Mr. Ostrin: I further offer to prove through this witness that after the vessel had docked on May 13th and the picket line was observed, that the members of the crew continued to perform their regular duties until about five or six o'clock in the afternoon, and that when they were advised that negotiations between representatives of the union and the company were fruitless, that the crew walked off the ship in furtherance of this dispute for recognition and a contract.

Mr. McAllister: Your Honor, we have no objection to the latter part.

[fol. 333] Mr. Ostrin: We further offer to prove through this witness—and in deference to you, Mr. McAllister, I will see if I can clearly state it—

Q. On Saturday and Sunday, May 14th and 15th, were you, and were other members of the crew in your presence asked to go back to the ship and perform your regular duties?

A. Yes, sir.

Q. And what did you say to that request?

A. Being a delegate, I asked a majority of the people present if they want to go back on board the ship.

Q. And what did you say?

A. When somebody asked my personal opinion I said I represented them as a delegate, I must be impartial, my opinion should not be unbalanced; I am just mouth-piece of the majority.

Q. Did you say anything about your going back to work?

A. Yes.

Q. What did you say?

A. Because I heard a lot of voices, from that I got it they were in the majority and I gave my opinion and I said "I prefer to die than go back to the ship."

Q. Did you make this statement in the presence of the members of the crew?

A. Yes, sir.

Q. How many members of the crew were present?

A. Well, I cannot estimate exactly.

Q. About?

A. It was a sum I could say about 70, 80, or 90.

Q. When you said that you would rather die than go back on the ship, did these people say or do anything?

A. The shout from them was unanimous. It was a shout of approval of what I said.

The Court: How many trips had you made on the *Nassau* prior to this?

[fol. 334] The Witness: On this ship or all?

The Court: Since you started.

The Witness: Are you referring to this or last year?

The Court: This year or last year on this ship?

The Witness: 36 the last year and 17 this year, but I think one or two were cancelled—well, one was cancelled for engine trouble.

The Court: How many?

The Witness: 36 last year and 17 this year, and one was cancelled. About 60, I would say.

The Court: 60 trips in all, that is, round trips?

The Witness: Yes.

The Court: Nobody forced you to take a job on this boat; did they?

The Witness: No.

The Court: Then why did you suddenly come to the realization after arriving in New York on May 13th that you would rather die than go back on the same ship?

The Witness: It was because it was a question of honor, a point of honor.

The Court: Well, it took you a long time to get around to the point of honor. You took 60 trips.

The Witness: First there wasn't at that time an International Union who could defend us, who were away from our country.

And then, although I had my wages as steward on the ship and I could make more money with tips, still I was fighting because of the difference of conditions between this country and my country economically speaking.

[fol. 335] Mr. Ostrin: I might say, your Honor, that one should remember and read the history of labor strife in this country, and he would find many, many presently organized workers, working for literally years in sub-standard conditions and wages, until the time was ripe for them to seek out union representation and recognition.

And even to this day there are a lot of people who sit and wonder, because they can't get anything else, and they work under conditions that they are dissatisfied with and wait for the proper time to seek out union representation and then fight for the improvements in wages and hours and other conditions.

I don't have anything further of this witness.

Mr. McAllister: No questions, your Honor.

(Witness excused.)

COLLOQUY

The Court: Mr. Interpreter, we have something for you to now interpret.

Mr. Ostrin: May we have a stipulation that this was prepared by the Ineres Line?

Mr. McAllister: Let us get it in English first.

Mr. Ostrin: All right; fine. May I have this translated, please, and I am referring now to Defendants' Exhibit N for identification.

The Official Interpreter: "Communique: May 21st, 1960.

"We call to the attention of the crew the following two official documents. The first document, extract from a decree of May 15th, 1960, of a Judge of the Supreme Court of the State of New York."

[fol. 336] Mr. Ostrin: I think we can stipulate that the first paragraph of Defendants' Exhibit N for identification is substantially the same as the last portion of the first paragraph of the show cause order with the interim restraining order which begins:

• • • • • • •

"from interfering in any way with the operation and management of the *SS. Nassau* and the *MS. Victoria,* from inciting, urging, or encouraging crew members to neglect their duties aboard said vessel; also from maintaining, supporting and directing or otherwise aiding or abetting the crew members who have left the said vessels and have refused to perform their duties thereon; also from picketing said vessels for any purpose."

Mr. McAllister: We will so stipulate, your Honor.

Mr. Ostrin: I would like more particularly the translation of the paragraph which follows:

The Official Interpreter: "This is from the minutes of the audience May 19, 1960, before the Supreme Court of the State of New York. Mr. Ostrin is the lawyer, counsel for I. M. W. U. There is another correction that we wish to bring forth in this decree."

Mr. McAllister: I just wanted to say again we would be glad to stipulate that this is a translation of pages 125 and 126 of the proceedings before this Court on Thursday, May 19th, being the statement that Mr. Ostrin made to this Court at that time.

Mr. Ostrin: May we show pages 125 and 126 to the interpreter and if he says that is what it is it is all right with me.

The Official Interpreter: That is right.

Mr. Ostrin: Supposing I read this and you follow me with the translation. This is paragraph 2 of Defendants' [fol. 337] Exhibit N for Identification, Mr. Ostrin speaking, and I quote.

"One other correction, modification that we want made in this order. The last clause of the order says: Also from picketing said vessels for any purpose. Now it is quite clear, as your Honor observed, in referring to Marine Cooks and Stewards' case that American Seamen, American Unions, can certainly picket within the ambit of Norris LaGuardia, and I submit also within the ambit of our Section 876-A to protect the inferior wages and working conditions paid to foreign seamen employed aboard foreign flags, because necessarily the payment of such inferior wages, the granting of such inferior working conditions, have a real and substantial adverse effect upon the wages and conditions of American seamen and their jobs."

The last clause, the last few lines of the clause are underscored in the leaflet.

"Now, these vessels are in direct competition with American owned and American flag vessels that are engaged in the same business and that by virtue of their being in direct competition by reason of the fact that they can pay, that these foreign flag vessels pay lower wages, our cruise business has seriously suffered, as a result of which there has been a loss of jobs."

"Jobs" is translated in English in the leaflet.

"Now, certainly under Marine Cooks and Stewards we have a right to picket for that purpose."

Is that right?

The Official Interpreter: That is right.

Mr. Ostrin: I will accept that translation as appears in pages 125 and 126 of the transcript with a notation that the leaflet has underscored that portion of my statement [fol. 338] which begins with "Of necessity the payment of these low wages and pay and because of these bad conditions of work they have had a substantial bad effect upon wages and conditions of the American seamen and their jobs."

That portion is underscored.

Mr. McAllister: Does that conclude it?

The Official Interpreter: Up to here (indicating).

Mr. McAllister: There is a further paragraph.

Mr. Ostrin: There is another paragraph which we did not read. Do you want me to read it?

Mr. McAllister: Yes, I want it all.

Mr. Ostrin: We can have it all.

I am referring to page 126 and I will read my statement and you will check me on it:

"I may add also that the very reason, and we have the Constitution of the Union here, your Honor, the very reason that the I.M. W. U. was formed, and it is stated in its preamble, is to safeguard, to build up the wages of seamen employed Pan-Lib-Hon bound vessels—" there is an error in the transcript—"employed on Pan-Lib-Hon vessels and at the same time protect and safeguard wages, hours and working conditions and employment of American seamen," and that portion is underscored.

"American seamen are losing jobs literally by the hundreds because of the operation of these Pan-Lib-Hon vessels."

And that is underscored.

"And the Supreme Court said the American Unions can picket under the Norris LaGuardia Act to preserve their own wages, hours and working conditions."

The Official Interpreter: That is right.

[fol. 339] Mr. Ostrin: Now, do you want anything else read, Mr. McAllister? Will you concede that was a communication prepared by the company and caused to be distributed among the members of the *Victoria* and the *Nassau*?

Mr. McAllister: That is correct.

Mr. Ostrin: I offer it in evidence.

(Defendants' Exhibit N for Identification marked in evidence.)

• • • • • • •

[fol. 343] New York, N. Y., May 25, 1960.

Trial Continued

Appearances: (Same as previously.)

Argument.

The Court: Gentlemen, I have spent considerable time going over the record in this case and considering the briefs that have been submitted to me, one of which was just handed to me by the defendants, and I am pretty familiar with the situation. However, I do not want to foreclose any attorney if he cares to say anything further.

I would like you gentlemen, because of the pressure of time and the work that I have, to each limit yourselves to fifteen minutes in the light of the full and complete discussion we have had up to now.

I think the record ought to indicate that during the course of the hearing the parties stipulated that testimony taken may be considered by the Court as though taken at a full trial, and that a decision made one way or the other would be a final decision either for a permanent injunction or for a judgment in favor of the defendants.

Am I correct, gentlemen?

Mr. Ostrin: On the permanent injunction, yes.

The Court: Yes, on the permanent injunction.

• • • • • • •

[fol. 360]

PLAINTIFF'S EXHIBIT 1

Certificate of Permanent Registration No. 2-55 for the SS. *Nassau*, Showing She Has a Liberian Flag Official No. 527

(See opposite) ☞

The Republic of Liberia

Treasury Department

Official No
[illegible]
Radio Call and Signal Letters
[illegible]

Permanent Certificate of Registry

Number [illegible]

N A S S A U
(Name of Vessel)

Measured	, 19	*Service*	Passenger Liner
Rebuilt at	, 19	*No of crew, excluding master*	293
Remeasured	, 19	*Horsepower*	13000

IN PURSUANCE OF TITLE II THE LIBERIAN MARITIME CODE

[illegible] JORDAN *having taken and subscribed the oath required by law and having sworn that*

Name	*Occupation*	*Residence*	*Citizenship*
Ingres Steamship Company Ltd.	Shipowner	Monrovia, Liberia	Liberian

(is, ~~are~~) the sole owner(s) of the vessel called the N A S S A U *formerly called* [illegible]
of Monrovia, Liberia, whereof Francesco Perilli *(who has sworn that he) is a citizen of* [illegible]
(Home port)
and is at present Master, and that the said vessel was built in the year 1922 *, at* Newcastle-on-Tyne, [illegible] *of* Steel *as appears by*
Certificate of Measurement *and* Lloyd's Register of Shipping *having certified that the said vessel is*

(is, ~~are~~) the sole owner(x) of the vessel called the NASSAU formerly called [illegible]

of Monrovia, Liberia, whereof (Home port) Francesco Perilli (who has sworn that he) is a citizen of [illegible]

and is at present Master, and that the said vessel was built in the year 1922, at Newcastle-on-Tyne, [illegible] of Steel as appears by Certificate of Measurement (Document of measurement), and Lloyd's Register of Shipping (Name of person who measured) having certified that the said vessel is a Twin Screw Steamer (Kind and build of vessel); that she has Three decks, Two masts; that her register length is [illegible] feet her register breadth is 72.0 feet, her register depth 29.5 feet, her height [illegible] feet that she measures as follows

	Tons	100ths
Capacity under tonnage deck	8964	12
Capacity between decks above tonnage deck	2979	62
Capacity of enclosures on the upper deck, viz Forecastle 293.43; bridge and poop [illegible] break deck houses ~~and~~ 679.89, side 24.18, chart 10.15, radio 13.26 excess hatchways, [illegible] ght and st	2100	42
Gross tonnage	15043	96

Deductions:

Crew space,	1099.53	Master's cabin,	21.76		
Steering gear,	- - -	Anchor gear,	23.23	Boatswain's stores	100.00
Chart house,	10.15	Dynamo Space [illegible] engine and boiler,	69.5	Radiohouse	13.26
Ballast pump,	- - -	Propelling power (actual space,	2456.4		

Total deductions	4131	9
Net tonnage	10912	--

The following-described spaces, and no others, have been omitted viz. Forepeak, afterpeak, cofferdams, other spaces (except double bottoms) for water-ballast - - -, open forecastle - - -, open bridge, open poop, open shelter deck, cabins 173.25, companions 50.93; galley 276.93; skylights 194.97; wheelhouse [illegible] water-closets, anchor gear, condenser - - - donkey engine and boiler - - -; steering gear 30.67; light and air over propelling machinery [illegible] other machinery spaces [illegible]

And Francesco Perilli (Name of person countersigning certificate of measurement) having agreed to the description and measurement above specified the vessel has been duly REGISTERED under the laws of The Republic of Liberia.

ISSUED by Authority of the Government of THE REPUBLIC OF LIBERIA under my hand and seal, this [illegible] day [illegible]

DEPUTY COMMISSIONER OF MARITIME AFFAIRS OF LIBERIA

The Commissioner of Maritime Affairs

By George V. Mechlouri

Deputy Commissioner of Maritime Affairs (Title)

Issued at New York, New York, U.S.A.

Plff's. Ex. 1 (1)

[fol. 361] *Plaintiff's Exhibit 1*

(See opposite) ☞

ENDORSEMENTS

s.s. N A S S A U OFFICIAL NO. 2 7

Perm. Cert. No.2-[illegible]5, Issued January 1[illegible], 19

Amendment, dated September 11, 1959 to First Preferred Fleet Mortgage (recorded in Book PM 11, Page 181) increasing the total amount to $[illegible],000,000. plus interest and commissions and fees, and performance of mortgage and terms and covenants of the Agreement, as amended; and changing date of maturity to December 31, 1962. Endorsed at port of New York on January 19, 1960 at 3:10 P.M.,E.S.T.

Book PM 11, Page 329

COMMISSIONER OF MARITIME AFFAIRS

[illegible] OFFICER
OF THE [illegible]
OF THE REPUBLIC OF [illegible]

THE REPUBLIC OF LIBERIA

TREASURY DEPARTMENT

SECOND FLEET

PREFERRED MORTGAGE ENDORSEMENT

S.S. [illegible] 2

Name of vessel Official No.

Perm. Cert. No2- -Jan. 1 , 1 . NEW Y

(Document number, date, and port)

MORTGAGE DESCRIPTION

Mortgagor Incres Steamship Company, [illegible]

Mortgagee FIAT

Endorsed January 19 19 at [illegible] pm E.S.T.

Total amount, $1 49,7?9, [illegible] and fees and performance of mort[illegible] terms and covenants.

Date of maturity December [illegible] 19[illegible]

Discharge amount. Same as the [illegible] amount.

Port of New York, New York

Book [illegible], Page [illegible]

SEAL

[signature]

[illegible] OF THE REPUBLIC OF LIBERIA

MORTGAGE DISCHARGE

Port of

FIRST FLEET

PREFERRED MORTGAGE ENDORSEMENT

(1) PREFERRED MORTGAGE ENDORSEMENT

MORTGAGE DESCRIPTION

Mortgagor Incres Steamship Company, Ltd.

Mortgagee Bank of America

Endorsed December 2, 19 54 at 10:30 A.M. E.S.T.

Total amount $ 583,333.35 and interest from September 30, 1954.

Date of maturity June 30, 19 56

Discharge amount $ Same as the Total Amount

[illegible] New York

By George U. Harvey

[illegible] Page 95

MORTGAGE DISCHARGE

Port of NEW YORK

MAY 1 19 5[illegible]

The sum of $ 583,333.35

been paid on the above-described mortgage, the cer-

tificate of such discharge being filed in the office

of COMMISSIONER OF MARITIME AFFAIRS, REPUBLIC OF LIBERIA

, 19 56 , at 3:55 P.M. EST

PAGE 41

By Albert J. Rudert

Official No. 527

Republic of Liberia
Treasury Department

Permanent
Certificate of Registry

No. 2-55

OF THE

Twin Screw Steamer

CALLED THE

NASSAU

OF

MONROVIA, LIBERIA

1503 gross tons 4912

ISSUED AT

New York, New York, U. S. A.

January 14, 19 55

WHERE SURRENDERED

WHEN SURRENDERED

WHY SURRENDERED

MORTGAGE DISCHARGE

Port of

FIRST FLEET

(2) PREFERRED MORTGAGE ENDORSEMENT

MORTGAGE DESCRIPTION

Mortgagor Incres Steamship Company, Ltd.

Mortgagee Bank of America

Endorsed April 7, 19 [illegible] at 11:25 A.M. EST

Total amount $ $3,500,000. plus interest, commissions and fees, and performance of mortgage and agreement terms and covenants.

Date of maturity November 30, 19 62

Discharge amount $ Same as the total amount.

[illegible] New York

Book No. 11, Page 151

(SEAL)

By Albert J. Rudert

DEPUTY COMMISSIONER OF MARITIME AFFAIRS OF THE REPUBLIC OF LIBERIA

MORTGAGE DISCHARGE

Port of

, 19

The sum of $ has

been paid on the above-described mortgage, the cer-

tificate of such discharge being filed in the office

of

19 , at m.

(SEAL)

Plff's. Ex. 1 (2)

[fol. 362]

PLAINTIFF'S EXHIBIT 2

Certificate of Permanent Registration No. 65-60 for SS. *Victoria*, Showing She Has a Liberian Flag Official No. 1145

(See opposite) ☞

The Republic of Liberia

Treasury Department

Permanent Certificate of Registry

Official No. 1145

Radio Call and Signal Letters ELQK

Number 65-60

VICTORIA
(Name of Vessel)

Measured , 19
Rebuilt at , 19
Remeasured , 19

Service Passenger Vessel
No. of crew, excluding master 200
Horsepower 14000 B.H.P.

IN PURSUANCE OF CHAPTER 2, THE LIBERIAN MARITIME LAW

Reginald Francis Barnett *having taken and subscribed the oath required by law and having sworn that*

Name	*Occupation*	*Residence*	*Citizenship*
[illegible]	[illegible]	Monrovia, Liberia	Liberian

(is ~~are~~) the sole owner(s) of the vessel called the VICTORIA *(formerly called* DUNBOTTAR CASTLE *)*
of Monrovia, Liberia, whereof Francesco Perilli *(~~who has~~ sworn that he) is a citizen of* Italy
(Home port)
and is at present Master, and that the said vessel was built in the year 19 37 *, at* Dolfast N. Ireland *of* Steel *as appears by*

(is ~~are~~) the sole owner(s) of the vessel called the VICTORIA (formerly called DUNBOTTAR CASTLE)

of Monrovia, Liberia, whereof (Home port) Francesco Perilli (~~who has sworn that he~~) is a citizen of Italy

and is at present Master, and that the said vessel was built in the year 19 37 at Belfast N. Ireland of Steel as appears by Certificate of Measurement (Document of measurement), and Lloyd's Register of Shipping (Name of person who measured) having certified that the said vessel is a Motor Screw (Kind and build of vessel); that she has Two decks, One masts; that her register length is 539.50 feet, her register breadth is 71.1- feet, her register depth 37.79 feet, her height - - - feet; that she measures as follows

								Tons	100ths
Capacity under tonnage deck								11476	44
Capacity between decks above tonnage deck									
Capacity of enclosures on the upper deck, viz: Forecastle 209.32	bridge 226.12	poop - - -	break - - -						
house—~~closed~~ open - - -	side - - -	chart 10.25	radio 11.32	excess hatchways - - -	light and air 401.11			842	59
						Gross tonnage		11917	03
Deductions:									
Crew space.	1376.92	Master's cabin.	41.57	Battery L.r.	5.49				
Steering gear.	5.46	Anchor gear.	19.35	Boatswain's stores.	100.00				
Chart house.	10.25	Donkey engine and boiler.	516.1-	Radiohouse.	11.32				
Ballast pump.	- - -	Propelling power (actual space.	1983.21	).	4773.35				
						Total deductions		722	99
						Net tonnage		11[illegible]	--

The following-described spaces, and no others, have been omitted viz: Forepeak - - - ; aftpeak - - - ; cofferdams - - - ; other spaces (except double bottoms) for water-ballast 122.90 open forecastle - - - ; open bridge - - - ; open poop - - - ; open shelter-deck - - - ; cabins 2948.00 companions 93.9 ; galley 17.17 ; skylights 3.- ; wheelhouse - - - ; water-closets 91.31 ; anchor gear - - - ; condenser - - - donkey engine and boiler - - - ; steering gear - - - ; light and air spaces [illegible] 63.92 ; other machinery spaces 950.10

~~I~~ (Name of person making certificate of measurement) Francesco Perilli having agreed to the description and measurement above specified, the vessel has been duly REGISTERED under the laws of The Republic of Liberia.

ISSUED by Authority of the Government of THE REPUBLIC OF LIBERIA under my hand and seal, this 21st day of April, 19 60

The Commissioner of Maritime Affairs

By ALBERT J. RUDICK

DEPUTY COMMISSIONER OF MARITIME AFFAIRS (Title)

Issued at New York, New York, U. S. A.

Piff's. Ex. 2 (1)

[fol. 363] *Plaintiff's Exhibit 2*

(See opposite) ☞

FLEET
(1) PREFERRED MORTGAGE ENDORSEMENT

MORTGAGE DESCRIPTION

Mortgagor Incres Steamship Company, Ltd.

Mortgagee Bank of America

Endorsed April 3 , *19* 59 , *at* 10:25a.m. Rotterdam's time

Total amount $3,500,000. plus interest , commissions and fees, and performance of mortgage and Agreement terms and covenants.

Date of maturity November 30 , *19* 62 .

Discharge amount Same as the total amount

Port of Rotterdam

Book PM 11, Page 151

Amendment, dated September 11,1959 to above First Preferred Fleet Mortgage increasing total amount to $4,000,000. plus interest and commissions and fees, and performance of mortgage and terms and covenants of the Agreement, as amended and changing date of maturity to December 31,1962. Endorsed at port of London on January 14,1960 at 12:45 P.M.,GMT.

Book PM 11, Page 329

Second Amendment dated March 2,1960, amends the above First Preferred Fleet Mortgage as amended, hereto by adding to Section 19 (g) references to First and Second Amendments; Endorsed at port of New York on April 21, 1960 at 4:30 P.M.,E.S.T.

Official No. 1145

Republic of Liberia
Treasury Department

Permanent
Certificate of Registry

No. 65-60
OF THE

FLEET
(2) PREFERRED MORTGAGE ENDORSEMENT

MORTGAGE DESCRIPTION

Mortgagor Incres Steamship Company, Ltd.

Mortgagee FIAT

Endorsed January 14 , *19* 60 *at* ..45pm GMT

Total amount $139,779.85 and fees and performance of mortgage terms and covenants.

Date of maturity December 31 , *19* 65

Discharge amount Same as the total amount

Port of London

Book PM 11, Page 349

[SEAL]

commissions and fees, and performance of mortgage and Agreement terms and covenants.

Date of maturity November 30 , 19 62

Discharge amount Same as the total amount

Port of Rotterdam

Book PM 11, Page 151

Amendment, dated September 11,1959 to above First Preferred Fleet Mortgage increasing total amount to $4,000,000. plus interest and commissions and fees, and performance of mortgage and terms and covenants of the Agreement, as amended;and changing date of maturity to December 31,1962. Endorsed at port of London on January 14,1960 at 12:45 P.M.,GMT.

Book PM 11, Page 329

Second Amendment dated March 2,1960, amends the above First Preferred Fleet Mortgage as amended, dated by adding to Section 19 (a) references to First and Second Amendments; Endorsed at port of New York on April 21, 1960 at 4:30 P.M.,E.S.T.

Book PM 12, Page 57

ALBERT J. RUDICK
DEPUTY COMMISSIONER
OF MARITIME AFFAIRS
OF THE REPUBLIC OF LIBERIA

MORTGAGE DISCHARGE

Port of

, 19

The sum of has been paid on the above-described mortgage, the certificate of such discharge being filed in the office of

, 19 , at m.

[SEAL]

Official No. 1145

Republic of Liberia
Treasury Department

Permanent
Certificate of Registry

No. 65-60
OF THE

Motor Screw
CALLED THE

VICTORIA
OF

MONROVIA, LIBERIA

11,917 *gross* 7644 *net*
ISSUED AT

New York, New York, U. S. A.
April 21st , 19 60

WHERE SURRENDERED:

WHEN SURRENDERED:

WHY SURRENDERED:

ance of mortgage terms and covenants.

Date of maturity December 31 , 19 65

Discharge amount Same as the total amount

Port of London

Book PM 11, Page 349

[SEAL]

ALBERT J. RUDICK
DEPUTY COMMISSIONER
OF MARITIME AFFAIRS
OF THE REPUBLIC OF LIBERIA

MORTGAGE DISCHARGE

Port of

, 19

The sum of has been paid on the above-described mortgage, the certificate of such discharge being filed in the office of

19 , at m.

[SEAL]

Piff's. Ex. 2 (2)

[fol. 365]

DEFENDANTS' EXHIBIT A-1

Certificate of Accuracy and English Translation of Letter to Crew of Vessel "*Nassau*", Dated May 16, 1960

(Letterhead of LAWYERS' & MERCHANTS' TRANSLATION BUREAU)

CERTIFICATE OF ACCURACY
TRANSLATION FROM ITALIAN TO ENGLISH

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

On this day personally appeared before me H. CASERTA who after being duly sworn, deposes and states:

That he is a translator of the Italian and English languages by profession and as such connected with the Law-
[fol. 366] yers' and Merchants' Translation Bureau;

That he is thoroughly conversant with these languages;

That he has carefully made the attached translation from the original document written in the Italian language, (on the official paper of the Lawyers' & Merchants' Translation Bureau); and

That the attached translation is a true and correct English version of such original, to the best of his knowledge and belief.

Subscribed and sworn to before me this May 17 1960.

HERTA BERTSCHE
Notary Public, State of New York
No. 41-0277200
Qualified in Queens County
Cert. Filed in New York County
Commission Expires March 30, 1961

[fol. 367]

TRANSLATION FROM ITALIAN—HCAS

PHONE DIGBY 4-3570 CABLE ADDRESS INCRESLINE
TELETYPE NO. N.Y. 1-6058 TELEX NO. N.Y. 3680

INCRES LINE
INCRES STEAMSHIP CO. LTD.
INCRES LINE AGENCY INC.
GENERAL AGENTS
39 BROADWAY, NEW YORK 6, N. Y.

New York, May 16th, 1960.

To the CREW OF THE VESSEL "*Nassau*"

It is the desire of the Company to reach a prompt settlement (clarification) of the regrettable situation that has come up during my absence.

In some conversations held lately I had promised to some of you to take some of your requests into consideration, which requests, however, were not made entirely clear to me.

I want to inform you that upon my return on board and with resumption of the regular service, the terms and conditions of enlistment shall be fully those contemplated in the Italian Collective Contract at present in force (July 25th, 1959) for the enlistment of crews for passenger vessels. This means also that the redemption (?) of the navigation will be borne to the extent of 75% by the shipowner and 25% by the seamen.

These conditions are retroactive, namely your will be paid the arrears from January 1st, 1960, on.

I furthermore place myself at your disposal in order to setfle, by direct negotiations, any other possible requests [fol. 368] that may be submitted to not later than 12 noon on May 17th by the representatives of the various departments on board.

"Mr. OSTER (Avvocato della I.M.W.U.): - C'e' un'altra correzione o modifica che noi desideriamo sia apportata a questo decreto. L'ultimo paragrafo del decreto dice: (La Union dovra' astenersi) anche dal collocare picchetti presso dette navi per qualsiasi scopo".
Ora e' ben chiaro, come Vostro Onore ha osservato, con riferimento al caso Marine Cooks and Stewards, che i marittimi americani, i Sindacati (Unions) americani possono certamente mettere picchetti nell'ambito della Legge Norris-La Guardia, ed io ritengo anche nell'ambito della nostra Sez. 876 A, per protestare contro le basse paghe e condizioni di lavoro date a marittimi stranieri impiegati sotto bandiere estere, perche' necessariamente il pagamento di queste basse paghe e la concessione di tali deteriori condizioni di lavoro hanno un reale e sostanziale effetto negativo nei confronti delle paghe e delle condizioni dei marittimi americani e dei loro impieghi.
Ora queste navi sono in concorrenza diretta con le navi di proprieta' americana e di bandiera americana che sono impiegate nella stessa attivita'; e per il fatto di essere in diretta concorrenza e per il fatto che possono pagare - che tali navi di bandiera estera pagano - salari inferiori, i nostri servizi di crociera hanno sofferto gravemente ed in conseguenza di cio' si e' avuta una perdita di posti di lavoro (jobs).
Ora, in base al caso Marine Cooks and Stewards noi abbiamo certamente il diritto di mettere picchetti per tale scopo.

Io posso aggiungere che proprio la ragione - e abbiamo qui la Costituzione della Union - proprio la ragione per cui la I.M.W.U. e' stata creata, e cio' e' precisato nel suo preambolo, e' quella di difendere e di incrementare le paghe dei marittimi impiegati sulle navi Pan-Lib-Hon e allo stesso tempo proteggere e difendere le paghe, le ore e le condizioni di lavoro e l'occupazione dei marittimi americani. I marittimi americani stanno perdendo letteralmente centinaia di posti (jobs) a causa dell'esercizio di queste navi Pan-Lib-Hon. E, come ha detto la Suprema Corte, le Unions americane possono mettere i picchetti sulla base della Legge Norris-La Guardia per preservare le loro proprie paghe, ore e condizioni di lavoro."

Domani il Comandante illustrerà all' equipaggio il presente comunicato, nonche' il punto di vista della Società nella presente

Dal primo documento risulta l'illegalita' dell'azione intrapresa dalla I.M.W.U. a cui e' stato dato l'ordine di non interferire nelle operazioni delle navi della Incres.

Dal secondo risulta chiaramente per bocca dell'avvocato della I.M.W.U., quali sono gli scopi della I.M.W.U. e dell'agitazione in corso, cioe' combattere in tutti i modi le navi di bandiera liberiana panamense eccetera, per levarle da mezzo e far posto alle navi di bandiera americana in modo da dar lavoro ai marittimi americani.

Defts. Ex. N

I furthermore guarantee to you that no reprisals will be taken against those who have brought the *Nassau* to the present regrettable situation.

I pledge myself to guarantee all the above to those who will show up on board the *Nässau* to resume their regular service on May 16th, 1960, on or before 9 a. m.

THE PRESIDENT OF THE
INCRES STEAMSHIP CO., INC., LTD.

Signed: BERLINGERI
(VINCENZO BERLINGERI)

DEFENDANTS' EXHIBIT C

Crew Roll and Articles of Agreement

(See opposite) ☞

INCRES STEAMSHIP COMPANY, LTD.

Crew Roll and Articles of Agreement

L'anno 19 60 addì 5 del mese di aprile tra la **Incres Steamship Company, Ltd., Monrovia** e le sottonotate persone (i minorenni in possesso del regolare consenso), viene convenuto e stipulato quanto segue:

1. I sottoscritti dovranno prendere imbarco nel Porto di NEW YORK sul s/s NASSAU nella qualità specificata per ognuno di essi, e dovranno essere pronti a partire per qualsiasi destinazione, in ogni momento in cui riceveranno ordini in proposito dal Comandante della Nave o da chi ne farà le veci.

2. Le condizioni di lavoro del Capitano e dei membri dell'equipaggio sono regolate dalle leggi della Repubblica di Liberia. In quanto non contrastanti con tali leggi salvo quanto diversamente stabilito dal presente accordo valgono le norme del Contratto Tipo della Incres Steamship Company, Ltd.

3. Il presente contratto viene stipulato per la durata della stagione di crociera 196 - 196 e comunque per non oltre un anno.

4. Le paghe mensili in lire saranno quelle del suddetto contratto.

5. I compensi per il lavoro straordinario all'equipaggio, saranno pagati secondo il Contratto sopradescritto.

6. Il personale di camera verserà a favore dei servizi interni e del fondo inventari le seguenti somme:

   Personale addetto al bar 3% sugli incassi

   Personale addetto alle cabine e al salone
   $ 1.00 per passeggero adulto a crociera

   Personale addetto al Deck $ 25.00 a crociera

   Personale addetto al Lounge $ 6.00 a crociera

   L'ammontare di tali versamenti verrà destinato per il 65% ai servizi interni e per il 35% al fondo inventari.

7. E' facoltà del Capo Commissario di variare la destinazione del personale alberghiero ogni qualvolta ciò fosse a suo giudizio opportuno.

8. La Compagnia Armatrice tratterrà mensilmente il 10% della paga, emolumenti e indennità a cui potesse avere diritto il marittimo quale fondo di garanzia per quelle spese a cui potesse andare incontro come conseguenza dell'eventuale sbarco per volontà o colpa del marittimo stesso.

La presente convenzione di arruolamento avrà sempre

This 5 day of aprile 19 60 between **Incres Steamship Company, Ltd., Monrovia** and the persons mentioned hereunder (persons not yet of full age in possession of regular assent) it is hereby agreed as follows:

1. The undersigned shall embark at the port of NEW YORK on the s s NASSAU in the capacity as shown for each one of them, and shall be ready to sail for any voyage and any destination whatsoever, at any time, whenever they shall receive orders to such effect from the Master of the ship or whomsoever replaces him.

2. The terms of employment of the Master and the rest of the crew are governed by the laws of the Republic of Liberia. If not in contrast with said laws - except where herein provided to the contrary - the terms of the standard contract of Incres Steamship Company, Ltd for the employment of marine personnel will apply.

3. The present contract is being stipulated for the duration of the cruise season 196 - 196 , and in any case not exceeding one year.

4. The monthly wages in Italian currency shall be as contemplated in the above mentioned contract.

5. All overtime work shall be paid to crew members pursuant to the provisions of the above mentioned contract.

6. The Steward Department personnel shall pay in favour of the internal services and the inventory fund the following amounts:

   Bar Stewards 3% of proceeds

   Cabin and Dining Room Stewards
   $ 1.00 for each adult passenger

   Deck Stewards $ 25.00 for each cruise

   Lounge Stewards $ 6.00 for each cruise

   The amount of the above payments will be apportioned as follow 65% to the internal services - 35% to inventory fund.

7. The Chief Purser will be at liberty to change the assignment of the Steward Dept. personnel whenever he may deem it necessary.

8. The Company will retain monthly 10% of the wages, emoluments and indemnities to which the crew member is entitled, as guarantee against such expenses as he may incur, as a consequence of volontary discharge or for insubordination.

The present articles of agreement will remain in force

le paghe mensili in lire saranno quelle del suddetto contratto.

5. I compensi per il lavoro straordinario all'equipaggio saranno pagati secondo il Contratto sopradescritto.

6. Il personale di camera verserà a favore dei servizi interni e del fondo inventari le seguenti somme:

   Personale addetto al bar 3% sugli incassi

   Personale addetto alle cabine e al salone
   $ 1.00 per passeggero adulto a crociera

   Personale addetto al Deck $ 25.00 a crociera

   Personale addetto al Lounge $ 6.00 a crociera

   L'ammontare di tali versamenti verrà destinato per il 65% ai servizi interni e per il 35% al fondo inventari.

7. E' facoltà del Capo Commissario di variare la destinazione del personale alberghiero ogni qualvolta ciò fosse a suo giudizio opportuno.

8. La Compagnia Armatrice tratterrà mensilmente il 10% della paga, emolumenti e indennità a cui potesse avere diritto il marittimo quale fondo di garanzia per quelle spese a cui potesse andare incontro come conseguenza dell'eventuale sbarco per volontà o colpa del marittimo stesso.

La presente convenzione di arruolamento sarà sempre valida qualunque sia il Capitano al comando, qualunque sia la nave della Compagnia Armatrice e qualunque sia la destinazione.

Data lettura del Contratto della Incres Steamship Company, Ltd., che a tutti gli effetti si considera qui interamente trascritto nel suo testo, e del presente contratto, le parti li hanno pienamente confermati, sottoscrivendo con me Console della Repubblica della Liberia.

NOTA - In caso di contestazione fà fede il contratto redatto in lingua italiana.

Defts. Ex. C

... monthly wages in Italian currency shall be as contemplated in the above mentioned contract.

5 All overtime work shall be paid to crew members pursuant to the provisions of the above mentioned contract.

6 The Steward Department personnel shall pay in favour of the internal services and the inventory fund the following amounts:

Bar Stewards 3% of proceeds.

Cabin and Dining Room Stewards
$ 1.00 for each adult passenger

Deck Stewards $ 25.00 for each cruise

Lounge Stewards $ 6.00 for each cruise

The amount of the above payments will be apportioned as follow: 65% to the internal services : 35% to inventory fund.

7 The Chief Purser will be at liberty to change the assignment of the Steward Dept. personnel whenever he may deem it necessary.

8 The Company will retain monthly 10% of the wages, emoluments and indemnities to which the crew member is entitled, as guarantee against such expenses as he may incur as a consequence of volontary discharge or for insubordination.

The present articles of agreement will remain in force whoever may be the ship's Master, whichever may be the Company's vessel and whichever may be the ports of call.

Having read the contents of the Contract of Incres Steamship Company Ltd., which to all effects and purposes is to be considered hereabove fully transcribed and having read the present agreement, the parties have accepted and signed same before me, Consul General of the Republic of Liberia.

NOTE - For any difference that may arise in respect to the present Contract, the Italian text of same shall apply.

[fol. 370]

DEFENDANTS' EXHIBIT H

Letter from Shannon J. Wall to Dott. Vincenzo Berlingeri, President of Incres Lines, Dated April 29, 1960

April 29th, 1960

Dott. Vincenzo Berlingeri
President—Incres Lines
39 Broadway—Rm 1508
New York, N. Y.

Dear Dott. Berlingeri:

The majority of the unlicensed personnel aboard your vessels have designated the International Maritime Workers Union to be their collective bargaining representative.

This letter is a formal request upon you to meet with representatives of your Company for the purposes of collective bargaining.

Please be advised that the International Maritime Workers Union is prepared in cooperating with other interested parties to pursue its rights in all of the legal directions available.

We are available to meet with your representatives at your convenience and await your advice as to time and place.

Yours very truly,

Shannon J. Wall
Executive Director

SJW:jk
oeiu-344-afl-cio
cc: Mr. Cooper
cc: Mr. Miller

[fol. 371]

DEFENDANTS' EXHIBIT I

Letter from Shannon J. Wall to Mr. Berlingeri, President of Incres Lines, Dated April 25, 1960.

April 25th, 1960

Mr. Berlinger, Pres.
Incres Lines
42 Broadway
New York, N. Y.

Dear Sir:

I have been out of the country for sometime during the past weeks which solely accounts for the delay in my contacting you.

At our recent meeting in your office we discussed the subject of the I.M.W.U. and Incres Lines entering into collective bargaining negotiations. Although some of the problems were placed on the table for discussion, one point on which we were in unanimous agreement was that we should continue to meet in order to avoid misunderstandings that might tend to delay our ultimately reaching a mutually satisfactory agreement.

Therefore, it is with this in mind and after consulting with a majority of the crew aboard both vessels that I suggest a meeting early this week at a time and place acceptable to you. It is our opinion that there is a solution to the problems raised by both sides at our previous meeting and we request that you give this prompt consideration.

Awaiting your reply, I remain,

Sincerely yours,

SHANNON J. WALL
Executive Director

SJW:jk
oeiu-344-afl-cio

[fol. 372]

DEFENDANTS' EXHIBIT N

Document in Italian. Entitled "Comunicato"

(Translated, *supra*, at pp. 230-232)

(See opposite) ☞

C O M U N I C A T O

21 Maggio 1960

Si richiama l'attenzione dell'equipaggio sui seguenti due documenti ufficiali:

Primo documento: ESTRATTO DEL DECRETO EMESSO IL 15 MAGGIO 1960 DAL GIUDICE DELLA CORTE SUPREMA DELLO STATO DI NEW YORK:

"... viene debretato che la convenuta International Maritime Workers Union, i suoi membri, rappresentanti, procuratori e dipendenti e coloro che agiscono di concerto con essa o che cooperano con essa - ed ognuno di essi individualmente - per virtu' del presente vengono diffidati dall'interferire in qualsiasi maniera con le attivita' del pfo. NASSAU e della mn/ VICTORIA, e dall'incitare, far pressione o incoraggiare i membri degli equipaggi a non compiere il proprio dovere a bordo di dette navi, come anche dal mantenere, appoggiare o altrimenti assistere o essere complici dei membri dell'equipaggio che lasciassero tali navi o rifiutassero di compiere su di esse il proprio dovere, nonche' dal collocare picchetti presso tali navi per qualsiasi scopo ..."

Secondo documento: ESTRATTO DEL VERBALE DELL'UDIENZA DEL 19 MAGGIO 1960 DINNANZI ALLA SUPREMA CORTE DELLO STATO DI NEW YORK:

"Mr. OSTRIN (Avvocato della I.M.W.U.): - C'e' un'altra correzione o modifica che noi desideriamo sia apportata a questo decreto. L'ultimo paragrafo del decreto dice: "La Union dovra' astenersi anche dal collocare picchetti presso dette navi per qualsiasi scopo".
Ora e' ben chiaro, come Vostro Onore ha osservato, con riferimento al caso Marine Cooks and Stewards, che i marittimi americani, i Sindacati (Unions) americani possono certamente mettere picchetti nell'ambito della Legge Norris-La Guardia, ed io ritengo anche nell'ambito della nostra Sez. 876 A, per protestare contro le basse paghe e condizioni di lavoro date a marittimi stranieri impiegati sotto bandiere estere, perche' necessariamente il pagamento di queste basse paghe e la concessione di tali deteriori condizioni di lavoro hanno un reale e sostanziale effetto negativo nei confronti delle paghe e delle condizioni dei marittimi americani e dei loro impieghi.
Ora queste navi sono in concorrenza diretta con le navi di proprieta' americana e di bandiera americana che sono impiegate nella stessa attivita'; e per il fatto di essere in diretta concorrenza e per il fatto che possono pagare - che tali navi di bandiera estera pagano - salari inferiori, i nostri servizi di crociera hanno sofferto gravemente ed in conseguenza di cio' si e' avuta una perdita di posti di lavoro (jobs).
Ora, in base al caso Marine Cooks and Stewards noi abbiamo certamente il diritto di mettere picchetti per tale scopo.

Io penso assicurare che prenda la ragione e abbiamo qui la

...illustrerà all' equipaggio il presente
...punto di vista della Società nella

[fol. 374]

ORAL DECISION BY JUSTICE HENRY CLAY GREENBERG, MAY 25, 1960

The Court: (Greenberg, J.) Gentlemen, as I have said repeatedly, this case has given me considerable pause and concern, because, in a way, it presents, perhaps, a new principle of law, particularly in so far as the State Courts are concerned. In another way it presents nothing particularly new or novel from the standpoint of Labor management relations, except in so far as the principles and the facts are concerned, the relationship between the seamen and the Master of a ship and the relationship between the seamen of that ship and the American Union.

First let me state that when this case orginally started on the first motion made to dismiss because of lack of jurisdiction in the court the Court got the distinct impression that the defendant Union here urged strongly that it was in no way involved in this strike; that it did not call the strike, and that the seamen aboard the *Nassau* and the *Victoria* on their own volition initiated such acts as have been portrayed here in the course of the trial. Thereafter, while Mr. Wall was on the stand, and again this morning Mr. Ostrin, counsel for the defendants, has stated that the strike was called by an American Union. So I think we can start with the accepted proposition, in contradistinction to the position taken by the Union at the beginning—I hope I am not wrong in this—that the American Union, the defendant herein, has been the moving and motivating spirit in the organizing of the seamen on the S/S *Nassau* and the S/S *Victoria* and had been responsible [fol. 375] for the strike which was called and the ensuing picketing.

I have gone over this lengthy record, covering more than four hundred pages, and have tried strenuously to orient myself to the attitude of the Labor Union in this case, as well as the position taken by the plaintiff herein. I have carefully considered again the Benz case and the Marine Cooks & Stewards case, and I want to say to Mr. Ostrin that I have boundless respect for the judgments and opin-

ions and views of Judge Frederick Van Pelt Bryan, upon whose opinion in the Afran case he placed so much stress. However, as an umpire in a baseball game, in a sense, I am called upon to call the shots, to use an expression of Judge Learned Hand, as I see them. If there be error committed by me, that error may be corrected by a higher tribunal.

We must start out with the proposition, to be sure contested to some extent by the defendants, that the operation of the *Nassau* and the *Victoria* was a distinctly foreign operation. The evidence shows that the vessels were foreign owned, foreign controlled, and that the seamen aboard the two vessels were all concededly foreign nationals; that they were recruited abroad and that they undertook employment pursuant to agreement effected in a foreign jurisdiction. Also, these ships were flying a foreign flag that came into this country under foreign registry.

I am aware of the fact, of course, that the Incres Steamship Company has an agency in America, and that it is claimed by the defendants that this agency transformed the operation from a strictly foreign operation, at least to [fol. 376] a partial American operation. I cannot subscribe to this argument by the defendants in this case. True enough, Mr. Wolfson, of the American corporation, had a measure of control. True enough, there was a relationship between the president of the foreign company and Mr. Wolfson of the American company. The fact remains, nevertheless, that even though there was an American agency here, this corporation, Incres Steamship Company, Ltd., must be deemed, and the Court concludes, that it is a foreign company which had its control not only of the corporate affairs, but over the internal affairs, economic and otherwise, of the two ships, the SS. *Nassau* and the SS. *Victoria*.

I am unable to find that there is a dispute between an American union in furtherance of legitimate American trade union objectives, against Incres. I cannot find that there is a dispute between an American union in furtherance of legitimate American trade union objectives and an American corporation, to wit, Incres Line Agency, Inc. On the contrary, I think the record speaks overwhelmingly

in favor of the conclusion reached by the Court that this strike was undertaken in the first place, by an American union for the purpose of organizing foreign nationals bound under articles of an agreement with a foreign corporation on ships which were controlled by Masters who also were foreign. In the second place, it cannot be said that there is a labor dispute between an American union, either at common law in the purview of Section 876-a of the State Law or in the light of the Federal Labor Relations Act. Indeed there could not, on the basis of this, be a labor dispute between the instant parties.

[fol. 377] It seems clear to me, in spite of the studied effort on the part of the defendants to bring themselves within the arena or the orbit of the Marine Cooks & Stewards case, that there was not a fight or a contest on the part of an American union in furtherance of legitimate American trade union objectives. Mr. Wall on the witness stand was hard put to answer the questions addressed to him by counsel and by the Court to show how the organizing of the seamen on these two vessels would affect legitimate American trade union objectives.

May I say parenthetically at this point, and not by way of apology, or defense, that this Court has shown by many of its decided cases, it has demonstrated a complete sympathy for the aspirations and legitimate objectives of the American trade union movement.

In cases which have gone to the Court of Appeals and in one instance to the Supreme Court of the United States, this Court went a far way in protecting the right of Labor to conduct an organization picketing campaign for a period of almost two years. And while this Court has suffered a reversal at the hands of the Appellate Division by a divided Court, the Court of Appeals equally divided four to three, sustained the views this Court had advanced.

I mention this so that the defendants will know, as well as the plaintiff, that labor has been a deep and abiding concern with this Court. At the same time, as a sworn judicial officer I am compelled to dispose of these matters on the basis of the facts and on the law as I construe it.

Now, here we have a case which in my judgment, upon reflection and consideration, falls squarely within the four [fol. 378] corners of the Benz case and even within the general language employed by Mr. Justice Black in the Marine, Cooks and Stewards case. There the Learned Justice of the Supreme Court said in two places in his opinion:

> "The Benz case thus considered the jurisdiction of a State court not the jurisdiction of a federal court, whereas the purpose of the Norris-LaGuardia Act was to restrict federal court jurisdiction in controversies involving labor disputes. Nothing was said or intimated in Benz that would justify an inference that because a state court has jurisdiction to award damages in labor disputes the United States Courts have the power to issue injunctions in like situation."

And again almost at the conclusion of the opinion the Justice said:

> "There is not presented to us here, and we do not decide, whether the picketing of petitioner was tortious under state or federal law. All we decide is that the Norris-LaGuardia Act deprives the United States court of jurisdiction to issue the injunction it did under the circumstances shown."

Now we come down to the real heart or meat of the case and that is this: Does an American Union consisting of American Nationals have the right and the power to instigate a strike, to organize foreign Nationals on a foreign registered boat and cause picketing to be thrown, in a sense, around these boats and thus interfere with the internal economy and affairs of these boats?

We have already alluded to the specific relationship which exists between the Master of a ship and the crew. And I think therein lies the great distinction between the [fol. 379] factual picture presented here and the analogy sought to be drawn by Mr. Ostrin in the case where a foreign National had come into this country and had gone into business and then had imported foreign Nationals

who were not citizens to conduct that business here. There is not that relationship which exists between a Master and a crew, where for the safety of the ship and the passengers the Master has the Supreme power to conduct its affairs without any interference by any outside agency, whether it be an American Union or some other agency.

These ships have come into this country and, true, are subject generally to our laws; health, labor laws, generally where certain requirements are made under the State law or the Federal law. But when we deal with the situation—and therein I draw a distinction which might be deemed by the defendants to be a very fine, thin and narrow one—where we come to deal with the matter of seeking to interfere, and that is precisely what happened here and there is no escape from it, with the internal management of a ship which has come into this port, with foreign Nationals, foreign owned, of a foreign nation. Does that American Labor Union have the right, I repeat, to organize the members of that ship; the crew the stewards and the others, and to cause a strike to be called at the pier? The answer of this Court is that it does not have that power under any of the decided cases drawn to the attention of this Court, as the Court itself construes those cases. If that is the fact, then obviously an act or any act on the part of the American Labor Union, in calling a strike of the seamen [fol. 380] and others on board these ships constituted an interference with the management and the economic affairs of that ship and resulted in a prima facie tort in so far as the ships themselves are concerned. In the view of this Court they had no right to go aboard that ship even with the permission of the Captain for the purpose of organizing the members of the crew and others. They had no right to call a strike and they had no right to picket this ship.

I base this conclusion not alone on the *Benz* case which would be sufficient, because there Mr. Justice Clark was careful to point out that in his research of the debate in Congress and the notes there taken that the purpose of the Norris-LaGuardia Act was to protect American seamen dealing with American business interests. That was

the central theme and the motivations for the enactment of that Act. Here, however, the situation is completely different. We are dealing with, and I regret to have to repeat this again, an attempt on the part of an American Union which is seeking, according to this record, not to protect the economic position of American seamen but is seeking to organize the members of the crew for its own purposes, that is, for the purposes of the defendant International Maritime Workers Union.

I have considered, although briefly, the supplemental memorandum submitted by the defendants but I am not persuaded that they have been able to place the facts in this case within the four corners of the ambit, to use Mr. Ostrin's word, of the Marine Cooks and Stewards case.

Mr. Justice Black was careful, as I said, in the disposition of the original motion, to point out the distinction be- [fol. 381] tween the Benz case and the facts in the Marine Cooks & Stewards case, and that very distinction is the basis for the disposition now being made by this Court.

I should like to allude to the decision of the Supreme Court in Southern Steamship Company against N. L. R. B., reported in 316 U. S. 31, a 1942 decision, wherein the Court held that seamen who engaged in a strike on board a vessel tied up at a dock, away from its home port, were not entitled to reinstatement by the N. L. R. B. following their discharge, and the Court specifically rejected the argument, as I have read the case, that the situation was different where the ship was tied to a dock. To all intents and purposes, while subject to American laws, it is still a foreign owned, foreign operated, foreign registered ship, and therefore was controlled by foreign laws in so far as the internal operation and management of the ships are concerned. Accordingly, this Court concludes that the defendants in this case had no right either under the Federal Act or the State Act, to call a strike or to picket the ships Nassau and Victoria. If they had no right to call the strike and to picket, they were interfering with recognized international rights under international treaties with the ownership of the ships Nassau and Victoria, and, further, this interference constituted a tort which this Court is not called upon to protect and should not protect.

I think that it would present a most intolerable situation if we were to permit or if the Courts were to permit an American union, however laudable the objectives may be, [fol. 382] and I think they are laudable, at least as shown by the articles of incorporation, or the constitution—I repeat, it would present an intolerable situation to permit an American union to interfere with the recognized rights of foreign nationals, of the crew, where a boat is foreign registered and foreign operated and controlled, even though that management is shared in part by an American agency resident in this country.

I find that there is no basis for the picketing in the light of the law as I construe it, and, accordingly, the Court grants the injunction, a permanent injunction, on the basis of the stipulation entered into between the parties.

You may settle findings and conclusions of law and judgment, although the Court states that its oral decision here rendered is in compliance with the appropriate provisions of the Civil Practice Act, with an appropriate exception to the defendants.

[fol. 383]

IN SUPREME COURT OF THE STATE OF NEW YORK

STIPULATION SETTLING CASE—June 15, 1960

It Is Hereby Stipulated and Agreed by and between the attorneys for the respective parties hereto that the foregoing case on appeal consisting of the transcript, exhibits and all papers referred to in the order and judgment dated June 7, 1960 contains all of the evidence given upon the trial, together with the exceptions of all parties, and that an order may be entered herein settling the same as such and ordering the same on file without further notice.

Dated: New York, N. Y., June 15, 1960.

Donovan Leisure Newton & Irvine, Attorneys for Plaintiff-Respondent.

Cooper, Ostrin & De Varco, Attorneys for Defendants-Appellants.

[fol. 384]

IN SUPREME COURT OF THE STATE OF NEW YORK

ORDER SETTLING AND FILING CASE—June 15, 1960

On the foregoing stipulation, the above case on appeal, which contains all the evidence and exceptions of all parties, is hereby settled and ordered on file.

Dated: New York, N. Y., June 15, 1960.

Enter

H. C. G., J.S.C.

[fol. 385]

IN SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7187-1960

Notice of Appeal

INCRES STEAMSHIP COMPANY, LTD., Plaintiff,

—against—

INTERNATIONAL MARITIME WORKERS UNION, SHANNON J. WALL, EDWARD POGOR, JOHN DOE and RICHARD ROE, Defendants.

NOTICE OF APPEAL OF DEFENDANTS INTERNATIONAL MARITIME WORKERS UNION AND SHANNON J. WALL, TO THE COURT OF APPEALS—August 29, 1960

Sirs:

Please Take Notice that the defendants International Maritime Workers Union and Shannon J. Wall hereby appeal to the Court of Appeals from the order of the Appellate Division of the Supreme Court, First Department, two judges dissenting, entered in the office of the Clerk of the Court on July 11, 1960, and the judgment entered thereon

in the office of the Clerk of the County of New York on August 4, 1960, modifying in part and except as modified affirming the order and judgment herein of the Supreme Court, New York County, entered in the office of the Clerk of the County of New York on June 7, 1960, and defendants appeal from each and every part of said order of [fol. 386] Appellate Division and judgment entered thereon.

Dated: New York, New York, August 29, 1960.

Yours, etc.,

Cooper, Ostrin & De Varco, 655 Madison Avenue, New York 21, New York; Miller & Seeger, 400 Madison Avenue, New York 17, New York, Attorneys for Defendants.

To: Clerk of County of New York.

Donovan, Leisure, Newton & Irvine, Esqs., Attorneys for Plaintiff, 2 Wall Street, New York, New York.

[fol. 387]

In Supreme Court of the State of New York

County of New York

Index No. 7187-1960

Notice of Appeal

Incres Steamship Company, Ltd., Plaintiff,

—against—

International Maritime Workers Union, Shannon J. Wall, Edward Pogor, John Doe and Richard Roe, Defendants.

Notice of Appeal of Plaintiff to the Court of Appeals—September 9, 1960

Sirs:

Please Take Notice that plaintiff Incres Steamship Company, Ltd., hereby appeals to the Court of Appeals from

so much of the order of the Appellate Division of the Supreme Court, First Department, entered in the office of the Clerk of that Court on July 11, 1960, and the judgment entered thereon in the office of the Clerk of the County of New York on August 4, 1960, as modifies, on the law and the facts, and in the exercise of discretion, the order and judgment herein of the Supreme Court, New York County, entered in the office of the Clerk of the County of New York, on June 7, 1960, by inserting the word "such" between the [fol. 388] words "any" and "purpose" in the second ordering paragraph of said order and judgment.

Dated: New York, New York, September 9, 1960.

Yours, etc.

Donovan Leisure Newton & Irvine, 2 Wall Street, New York 5, New York, Attorneys for Plaintiff.

To: Clerk of County of New York.

Cooper, Ostrin & De Varco, Esqs., Miller & Seeger, Esqs., Attorneys for Defendants, International Maritime Workers Union and Shannon J. Wall.

[fol. 389]

At a Term of the Appellate Division of the Supreme Court of State of New York, held in and for the First Judicial Department, at the Court House thereof, in the City of New York, on the 11th day of July, 1960.

Present: Hon. Bernard Botein, Presiding Justice; Hon. Charles D. Breitel, Hon. Francis L. Valente, Hon. James B. M. McNally, Hon. Harold A. Stevens, Justices.

Incres Steamship Company, Ltd., Plaintiff-Respondent,

—against—

International Maritime Workers Union, Shannon J. Wall, Edward Pogor, John Doe and Richard Roe, Defendants-Appellants.

ORDER OF MODIFICATION OF APPELLATE DIVISION, APPEALED FROM—July 11, 1960

The defendants-appellants, International Maritime Workers Union and Shannon J. Wall, having appealed to the Appellate Division of the Supreme Court from an order and judgment entered in the office of the Clerk of the [fol. 390] County of New York, on the 10th day of June, 1960, herein, and the said appeal having regularly come on to be heard on the 16th day of June, 1960, at a term of this court, and after hearing Cooper, Ostrin & De Varco and Miller & Seeger, by H. Howard Ostrin, Esq. of counsel, attorneys for defendants-appellants International Maritime Workers Union and Shannon J. Wall, and Donovan, Leisure, Newton & Irvine, by Breck P. McAllister, Esq., of counsel, attorneys for plaintiff-respondent Incres Steamship Company, Ltd., and due deliberation having been had thereon, and upon the majority and dissenting opinions of the Court, filed herein on July 6, 1960, it is

Ordered, Adjudged and Decreed that the order and judgment so appealed from be and the same hereby are modified on the law and the facts, and in the exercise of discretion, in the following respect:

The words "also from picketing said vessels for any purpose" in the second ordering paragraph are modified by inserting the word "such" between the words "any" and "purpose" so as to read "also from picketing said vessels for any such purpose" and except as so modified said order and judgment be and the same hereby are affirmed with costs to the plaintiff-respondent;

And it is Further Ordered, Adjudged and Decreed that the ordering paragraphs in the order and judgment appealed from as herein modified and otherwise affirmed shall read as follows:

Ordered, Adjudged and Decreed that the Court has jurisdiction of the cause and to grant the injunctive relief as [fol. 391] prayed for in the complaint herein and the said motion of defendants to dismiss the complaint be and the same hereby is denied;

And it is Further Ordered, Adjudged and Decreed that the plaintiff have judgment against the defendants permanently restraining and enjoining the defendants, their successors, their members, agents and servants and those persons in active concert or participation with defendants who receive actual notice of this judgment by personal service or otherwise and each and every one of them from, on and after the 10th day of June, 1960, interfering in any way with the operation and management of the *SS. Nassau* and the *MV Victoria*, from inciting, urging or encouraging crew members to neglect their duties on board said vessels, also from maintaining, supporting, directing or otherwise aiding or abetting crew members who have left said vessels and have refused to perform their duties thereon and also from picketing said vessels for any such purpose;

And it is Further Ordered, Adjudged and Decreed that the jurisdiction of the Court over the claim of plaintiff for damages and for such further and other relief requested in the complaint herein as may be just and proper be reserved for trial in regular course, and to that extent the claim is severed."

(Two of the justices dissent and vote to reverse and dismiss the complaint.)

Enter:

J. B. M. Mc

[fol. 392]

IN SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7187-1960

INCRES STEAMSHIP COMPANY, LTD., MONROVIA, LIBERIA,
Plaintiff,

—against—

INTERNATIONAL MARITIME WORKERS UNION, 265 West 14th Street, New York 11, New York, SHANNON J. WALL, 64 West Saddle River Road, Waldwick, New Jersey, EDWARD POGOR, JOHN DOE and RICHARD ROE, Defendants.

JUDGMENT OF MODIFICATION APPEALED FROM—August 4, 1960

The defendants International Maritime Workers Union and Shannon J. Wall, having appealed to the Appellate Division of the Supreme Court, First Department, from an order and judgment of the Supreme Court, New York County, made and entered in the office of the Clerk of the County of New York, on the 10th day of June, herein, denying defendants' motion to dismiss the complaint, permanently enjoining defendants from interfering in any way with the operation and management of the *SS. Nassau* and the *MV. Victoria*, from inciting, urging or encouraging crew members to neglect their duties on board said vessels, also from maintaining, supporting, directing or otherwise aiding [fol. 393] or abetting crew members who have left said vessels and have refused to perform their duties thereon, and also from picketing said vessels for any purpose, and severing and reserving plaintiff's claim for damages for trial in regular course, and the said appeal having regularly come on to be heard on the 16th day of June, 1960, and the said Appellate Division having duly made an order dated July 11, 1960; two of the Justices of said Court dissenting and voting to reverse and dismiss the complaint, a certified copy of which order, together with the papers

upon which the said appeal was heard, was filed in the office of the Clerk of the County of New York on July 15, 1960, and it appearing by said order that the Appellate Division, First Department, has ordered that the order and judgment so appealed from be modified on the law and facts, and in the exercise of discretion, by inserting the word "such" between the words "any" and "purpose" in the second opening paragraph, so as to read "also from picketing said vessels for any such purpose," and, except as so modified, that the order and judgment so appealed from be affirmed with costs of said appeal.

Now, on motion of Donovan Leisure Newton & Irvine, attorneys for the plaintiff-respondent herein, it is

Adjudged that the order and judgment so appealed from be and the same hereby are modified on the law and the facts, and in the exercise of discretion, in the following respect:

The words "also from picketing said vessels for any purpose" in the second ordering paragraph are modified by inserting the word "such" between the words "any" and [fol. 394] "purpose" so as to read "also from picketing said vessels for any such purpose" and except as so modified said order and judgment be and the same hereby are affirmed with costs to the plaintiff-respondent;

And it is Further Adjudged that the ordering paragraphs in the order and judgment appealed from as herein modified and otherwise affirmed shall read as follows:

Ordered, Adjudged and Decreed that the Court has jurisdiction of the cause and to grant the injunctive relief as prayed for in the complaint herein and the said motion of defendants to dismiss the complaint be and the same hereby is denied;

And it is Further Ordered, Adjudged and Decreed that the plaintiff have judgment against the defendants permanently restraining and enjoining the defendants, their successors, their members, agents and servants and those persons in active concert or participation with defendants who receive actual notice of this judgment by personal

service or otherwise and each and every one of them from, on and after the 10th day of June, 1960, interfering in any way with the operation and management of the *SS. Nassau* and the *MV Victoria*, from inciting, urging or encouraging crew members to neglect their duties on board said vessels, also from maintaining, supporting, directing or otherwise aiding or abetting crew members who have left said vessels and have refused to perform their duties thereon and also from picketing said vessels for any such purpose;

[fol. 395] And it is Further Ordered, Adjudged and Decreed that the jurisdiction of the Court over the claim of plaintiff for damages and for such further and other relief requested in the complaint herein as may be just and proper be reserved for trial in regular course, and to that extent the claim is severed.

And it is Further Adjudged that the said plaintiff Incres Steamship Company, Ltd., Monrovia, Liberia, recover of the defendants International Maritime Workers Union, 265 West 14th Street, New York 11, New York, and Shannon J. Wall, 64 West Saddle River Road, Waldwick, New Jersey, the sum of $178.74 the amount of its costs herein, as taxed, and that it have execution against said defendants International Maritime Workers Union and Shannon J. Wall therefor.

Judgment signed and entered this 4th day of August, 1960.

James McGurrin, Clerk.

[File endorsement omitted]

[fol. 396]

IN SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, First Department, June 1960

Bernard Botein, P. J., Charles D. Breitel, Francis L. Valente, James B. M. McNally, Harold A. Stevens, JJ.

2750

INCRES STEAMSHIP COMPANY, LTD., Plaintiff-Respondent,

vs.

INTERNATIONAL MARITIME WORKERS UNION, SHANNON J. WALL, EDWARD POGOR, JOHN DOE and RICHARD ROE, Defendants-Appellants.

MAJORITY OPINION OF APPELLATE DIVISION—August 4, 1960

Appeal from an order of a Special Term of the Supreme Court, New York County (Greenberg, J.), and the judgment entered thereupon, both entered June 7, 1960, which denied defendants' motion to dismiss the complaint, permanently enjoined defendants and severed and preserved plaintiff's claim for damages for a later trial.

A. Howard Ostrin of counsel (Herman E. Cooper and Eugene N. Sosnoff with him on the brief; Cooper, Ostrin & De Varco and Miller & Seeger, attorneys) for Defendants-Appellants.

[fol. 397] Breck P. McAllister of counsel (Walter L. Stratton and Philip J. Loree with him on the brief; Donovan Leisure Newton & Irvine, attorneys) for Plaintiff-Respondent.

Breitel, J.:

The question in this case is whether an American labor union may strike a foreign ship engaged in foreign commerce while such ship is in an American port, and, if not, whether a state court may enjoin such activity.

After a trial, Special Term granted a permanent injunction. The union has appealed.

Plaintiff is a Liberian corporation, actually owned and controlled by Italian nationals. It owns two cruise ships, which are r[illegible]ered in Liberia and fly, as a flag of convenience, the [illegible]g of that nation. The ships are claimed to have Monrovia, Liberia, as their home port, although it is conceded that the ships have not been known to have visited that port. The ships, catering largely to American custom, generally ply the sea lanes between New York City and ports in the Caribbean. Their crews are of Italian nationality and are recruited under written articles in Italy. The crews take their leave, and the ships are refitted or repaired in Genoa, Italy, on annual European cruises.

Defendant union is called the International Maritime Workers Union. It was conceived in 1959 at a conference of maritime unions held in London, England, and was formed shortly thereafter by two American maritime unions. Its purpose is to organize foreign seamen employed in ships flying various foreign flags of convenience, [fol. 398] which ships are competitive with those that fly the American flag and maintain high labor standards.

The union picketed, organized, and eventually struck plaintiff's two ships while in New York City. As a result the sailings were cancelled. This action ensued and resulted in the permanent injunction which now bars the union from such activity.

There are some peripheral issues and facts raised in the case, but they are hardly determinative: The union stresses the American contacts of the ships by pointing out that their affairs are largely managed in New York City, by an agency corporation, controlled and owned by plaintiff, but incorporated in New York. It stresses too that the cruises run by plaint[illegible] originate in New York City and return there. Plaintiff, on the other hand, stresses various disputed acts committed by the union which it claims to be illegal, but which, on the analysis in this case, it is not necessary to reach.

There are some simple conclusions to be first derived, before the more difficult aspects of the case are considered.

First, the Liberian nationality of plaintiff and the Liberian registry of the ships should not be conclusive of the character of shipping involved. The National Labor Relations Board, in appropriate cases involving "American" ships flying foreign flags of convenience has so determined, and the conclusions are entirely persuasive (*Peninsular & Occidental S. S. Co.*, 120 N. L. R. B. 1097 [1958]; *Eastern Shipping Corp.*, N. L. R. B. Case No. 12—R C —415 [1959], CCH-NLRB Decisions ¶56,698 [1959-1960]). So, too, has the United States District Court in this district (*Afran* [fol. 399] *Transport Co.* v. *Nat. Maritime Union*, 169 F. Supp. 416 [Bryan, J.], in an especially well-considered opinion, cited with evident respect by the Supreme Court in *Marine Cooks Union* v. *Panama S. S. Co.*, *infra*, 362 U. S. 365). Looking beyond the flag of convenience, however, does not change the character of the ships here from foreign to domestic. The shipping is still foreign—Italian in fact—because of Italian ownership, Italian crews, Italian contracts of hiring, and because the ships are engaged in foreign commerce on the high seas. Quite a different case would be presented if the ships were used exclusively or largely on inland waterways, or for that matter, if one or more of the other factors mentioned were changed. This does not mean that a change in any of these factors would require a contrary result. It is that there would then be a doubtful question of applicability of the federal labor statute and the rule in *Garner* v. *Teamsters Union* (346 U. S. 485) and *San Diego Unions* v. *Garmon* (359 U. S. 236) would apply. (See *Dooley* v. *Anton*, N. Y. 2d).

Second, in the absence of federal preemption of the field by federal labor statutes or preclusion of jurisdiction by virtue of labor anti-injunction statutes, the striking or other interference with the internal management of the crew of a vessel away from its home port is illegal (*Southern S. S. Co.* v. *Labor Board*, 316 U. S. 31). Such interference is illegal because it violates public policy, and, in the case of an American ship, is even a criminal act (U. S. Code, tit. 18, §§ 2192, 2193). Thus, in the *Southern S. S.* case, it was held that the National Labor Relations Board could not order the reinstatement of seamen discharged [fol. 400] for striking an American ship away from its

home port ev[illegible] though it had also found that the men had struck because of the employer's unfair labor practices in violation of the then National Labor Relations Act. The court said:

> "Ever since men have gone to sea, the relationship of master to seaman has been entirely different from that of employer to employee on land. The lives of passengers and crew, as well as the safety of ship and cargo, are entrusted to the master's care. Every one and every thing depend on him. He must command and the crew must obey. Authority cannot be divided. These are actualities which the law has always recognized. On the one hand, it has imposed numerous prohibitions against conduct by seamen which destroys or impairs this authority. We shall consider in a moment the nature and scope of the criminal sanctions imposed in case of revolt and mutiny. But it is worth noting here that the form of the 'shipping articles,' which the master and every member of the crew must sign prior to the voyage, has been carefully prescribed by Congress, and that these articles contain this promise: 'And the said crew agree . . . to be obedient to the lawful commands of the said master . . . and their superior officers in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore . . .' U. S. C., Title 46, §§564, 713. On the other hand, workers at sea have been the beneficiaries of extraordinary legislative solicitude, undoubtedly prompted by the limits upon their ability [fol. 401] to help themselves. The statutes of the United States contain elaborate requirements with respect to such matters as their medicines, clothing, heat, hours and watches, wages, and return transportation to this country if destitute abroad. U. S. C., Title 46, §§651-692, 1131. It is in this setting of fact and law that we must test the validity of the Board's order of reinstatement." (38-39)

The court went on to find that "the strike was unlawful from its inception" (48). The policy underlying this princi-

ple in the law of the sea is one that has had recognition for a long time, and insofar as foreign ships are concerned, has special vitality because of the comity among nations (*cf.*: *Wildenhus's Case*, 120 U. S. 1; *Lauritzen* v. *Larsen*, 345 U.S. 571).

Third, apart from the question of public policy pervading foreign shipping, and particularly the law of the sea as to the management of a ship's crew, the union activity would be privileged. That is, the economic self-interest of American workers to protect themselves from the competitive depredations of others using foreign labor working under sub-standard conditions would provide just cause for the intentional economic injury directed to such competition (see, Frankfurter and Greene, The Labor Injunction, 24 *et seq.*; Forkosch, A Treatise on Labor Law, 398 *et seq.*; *Exchange Bakery & Restaurant, Inc.* v. *Rifkin*, 245 N. Y. 260). While most of the cases and most of the commentators have considered only domestic disputes, the same principle of justification which applies in the domestic dispute in reason and policy should apply to one involving [fol. 402] foreign commerce, provided of course, no other overriding policy or law makes the activity illegal.*

On application of but these three conclusions last discussed, the union's activity was wrongful and not privileged, because it interfered with the engagement and management of the ships' crews while the ships were away from the home port. For this purpose, obviously, Monrovia is not the home port, but neither is New York City, merely because the latter is the most important port in the traffic carried by the ships. For the purposes of this *de facto* Italian line, it is evident that Genoa in Italy is the home port.

But the discussion may not be concluded at this point. The questions still remain whether there has been federal

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* On this analysis, there is disagreement with the conclusion of the trial court that defendant union did not have an economic self-interest in seeking to organize plaintiff's ships, which interest might justify the union's economic activity, provided its methods did not fail of legality for other reasons, such as interference with the ship's discipline, secondary boycott, and the like.

pre-emption by virtue of the federal labor statutes and whether there are any jurisdictionally inhibiting labor anti-injunction statutes.

The Supreme Court has held that the National Labor Management Relations Act does not apply to foreign shipping. In *Benz* v. *Compania Naviera Hidalgo* (353 U. S. 138), the court said, referring to the federal LMRA:

> "The parties point to nothing in the Act itself or its legislative history that indicates in any way that the Congress intended to bring such disputes within the coverage of the Act. Indeed the District Court found to the contrary, specifically stating that the Act does [fol. 403] not 'cover a dispute between a foreign ship and its foreign crew' . . .
>
> "Our study of the Act leaves us convinced that Congress did not fashion it to resolve labor disputes between nationals of other countries operating ships under foreign laws. The whole background of the Act is concerned with industrial strife between American employers and employees." (142-144)

Later, in *Marine Cooks Union* v. *Panama S. S. Company* (362 U. S. 365), the court, speaking of its holding in the *Benz* case, said:

> "The question in the *Benz* case was whether the Labor Management Relations Act of 1947 governed the internal labor relations of a foreign ship and its foreign workers under contracts made abroad while that ship happened temporarily to be in American waters. The *Benz* case decided that the Labor Management Relations Act had no such scope or coverage and that it accordingly did not bar the jurisdiction of state courts in that field."

Notably, the Supreme Court did not hold that there was a Congressional abstention from regulating in the field, so that there might be a preemption by silence, that is, an intention to leave the area of foreign shipping untrammelled by the several regulatory prohibitions and protections provided in the federal statute. Instead, it held that

Congress did not intend to apply the federal statute at all to foreign shipping. In consequence, the rule in *Garner* v. *Teamsters Union, supra,* (346 U. S. 485) and *San Diego Unions* v. *Garmen, supra,* (359 U. S. 236) is similarly inapplicable.

[fol. 404] True, in this case, as distinguished from the *Benz* case, the contact with the American port is regular rather than a one-instance occurrence. But, in both cases, the custom is American: in the one a cargo of wheat was to be taken on for transshipment, while in the other it consists of American passengers. The distinction is not sufficient to avoid the impact of the holding in the *Benz* case.* Moreover, until the Supreme Court narrows the major premise of the holding in the *Benz* case, a state court is concluded by it.

[fol. 405] In the airline field, there is an example of intentional Congressional abstention from applying a labor stat-

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* "But application of American statutes to labor relations on board foreign oceangoing vessels only transitorially in United States waters presents different problems and must be considered in light of principles of international law. Under settled doctrine, ports and adjacent waters are within the sovereign territory of the coastal state, which may, therefore, prohibit access by foreign vessels or permit entry only on such conditions as it may choose to impose. The absolute power of the coastal state is tempered, however, by the demands of comity among nations, which require it to exercise a high degree of self-restraint, particularly in matters involving the 'internal economy' of a foreign vessel.

"In determining whether to exercise its sovereign prerogatives, the coastal state must consider its self-interest shared with other nations—an 'inclusive' interest—in free commercial navigation in addition to the local interests which it seeks to protect by exercise of jurisdiction—its 'exclusive' interests—and the exclusive interests of foreign states. Regulation which constitutes an unreasonable interference with the internal economy of foreign ships may evoke defensive exercise of jurisdiction by other coastal states, thus subjecting oceangoing vessels to different laws in every port. For example, if a coastal state required that every vessel entering its waters employ a crew consisting entirely of the coastal state's nationals, other states might be forced to respond by comparable legislation, and mutually beneficial world trade would be brought to a virtual standstill." (Comment: The Flag-of-Convenience Fleet, 69 Yale L. J. 498, at 504-505.)

ute to events and relationships occurring in foreign commerce outside the continental United States. Thus it has been held that the Railway Labor Act (U. S. Code, tit. 45, §151 et seq.) does not apply to employees of American airlines engaged in flights between points outside the continental United States, based entirely and exclusively on legislative intention (*Air Line Stewards* v. *Northwest Airlines*, 267 F. 2d 170, cert. denied 361 U. S. 901; see also, *Air Line Dispatchers Ass'n* v. *National Mediation Board*, 189 F. 2d 685, 690, cert. denied 342 U. S. 849).

Consequently, it is not possible to find that the federal labor statute applies to foreign shipping or to the dispute which gave rise to this case. Hence, there is no federal preemption ousting the state courts of jurisdiction.

The federal labor anti-injunction statute (U. S. Code, tit. 29, §§101 *et seq.*) applies, of course, only to the federal courts. In *Marine Cooks Union* v. *Panama S. S. Co., supra*, (362 U. S. 365), it was held that the federal anti-injunction statute deprived federal courts of jurisdiction to enjoin illegal labor union activity in foreign shipping, even though the federal labor statute (LMRA) did not apply. In brief, it was held that the anti-injunction statute had a broader applicability than did the regulatory labor statute.

While it is true that New York's labor anti-injunction statute (Civ. Prac. Act, §876-a) was closely fashioned after the federal statute, and it is even arguable that it was intended to be even more restrictive of judicial labor injunctions, the New York statute has been much more nar- [fol. 406] rowly defined by the highest court of this State. It has been held that, in order for a dispute to qualify under the statute as a "genuine labor dispute", the dispute must have had a "lawful purpose". (*Goodwins, Inc.* v. *Hagedorn*, 303 N. Y. 300, 305; *Dinny & Robbins, Inc.* v. *Davis*, 290 N. Y. 101; *cf. Florsheim Shoe Store Co.* v. *Shoe Salesmen's Union*, 288 N. Y. 188; *American Guild of Musical Artists* v. *Petrillo*, 286 N. Y. 226; *Opera on Tour, Inc.* v. *Weber*, 285 N. Y. 348; *Thompson* v. *Boekhout*, 273 N. Y. 390; see, *Mays Furs & Ready-to-Wear, Inc.* v. *Bauer*, 282 N. Y. 331; *Arnold Bakers* v. *Strauss*, 1 A. D. 2d 604, 608, app. dis. 2 N. Y. 2d 721.) As a novel question one might

well quarrel with such a rendition of the statute, but the weight of authority is hardly escapable by an intermediate appellate court.

Consequently, it is concluded that no labor anti-injunction statute precludes the state court from enjoining the "illegal" activity of defendant union in striking plaintiff's ships and picketing for the purpose of inducing a breach of the articles of hiring of the ships' crews and the disciplines of the ships.

In reaching these conclusions one is aware of the substantial competitive effect of these foreign flag ships upon the condition of the American seaman. But the problem is one for Congress. It has the power to take whatever action is necessary, for the solution is largely limited only by its own discretion (*Benz* v. *Compania Naviera Hidalgo, supra,* 353 U. S. 138, 142). Indeed, the federal government has not hesitated in many areas to intrude on the "internal economy" of a foreign ship as a condition to entry into American ports (see, *Benz* case, *supra,* at pp. 144-145). It [fol. 407] is one thing for Congress to intrude in this field; it would be quite another for the courts to do so. This was expressed succinctly in the *Benz* case:

> "For us to run interference in such a delicate field of international relations there must be present the affirmative intention of the Congress clearly expressed. It alone has the facilities necessary to make fairly such an important policy decision where the possibilities of international discord are so evident and retaliative action so certain. We, therefore, conclude that any such appeal should be directed to the Congress rather than the courts" (147).

A state court can hardly say less; it should not say more.

On the foregoing reasoning the order and judgment granting a permanent injunction should be substantially affirmed. In one respect, however, it requires modification. The second ordering paragraph should be modified to provide that the words "also from picketing said vessels for any purpose" should read "also from picketing said vessels for any such purpose", the word "such" being necessary to

limit the injunction to the condemned activity as presented in this case.

Accordingly, the order and judgment should be modified, on the law and the facts, and in the exercise of discretion, to insert the word "such" in the second ordering paragraph as hereinabove mentioned, and should otherwise be affirmed, with costs to plaintiff-respondent.

All concur except Botein, P. J., and Stevens, J., who dissent and vote to reverse in opinion by Botein, P. J.

[fol. 409]

BOTEIN, P.J. (dissenting):

Plaintiff, a corporation organized under the laws of Liberia, operates two cruise vessels under the Liberian flag. All of plaintiff's officers and shareholders are foreign nationals; and the ships are manned by alien crews hired at Genoa, Italy. No Liberian citizen, however, plays any role in either the management of plaintiff or in the operation of its ships.

All of plaintiff's cruises originate in New York, and its passengers are principally Americans. Plaintiff occupies common office space in the City of New York with its agency, a New York corporation. Plaintiff's president is also an officer and director of the agency, which sometimes alone, sometimes jointly with plaintiff, provisions the ships, books passengers, schedules departures and arrivals, and attends to ships' repairs—all out of the New York office.

Defendant International Maritime Workers Union was formed recently by two large maritime unions affiliated with AFL-CIO. An avowed major purpose, recited in the preamble to the union's constitution, is to bring strong and responsible union representation to the crews of ships flying so-called "flags of convenience". Defendant union contends that plaintiff's ships fall into this category, and that their victimized crews are denied human dignity, [fol. 410] decent wages and working conditions. When plaintiff's vessels ply regularly in and out of New York, the union claims their substandard labor conditions also

pose a real menace to the preservation of the high, hard-won standards prevailing on American flag vessels under contract with American maritime unions.

Representatives of the union made contact with crew members aboard both of plaintiff's vessels, for the purpose of organizing them, to the end that they would be represented by the union. They also picketed both ships upon their arrival in New York Harbor and were successful in preventing their scheduled departures. The picketing at all times was orderly and peaceful—in fact, the pickets never exceeded three in number. Plaintiff served a summons and complaint seeking a permanent injunction and damages of defendant union and its executive director. Following trial an order and judgment were entered, denying defendants' motion to dismiss the complaint on the ground the court lacked jurisdiction over the subject matter, permanently enjoining defendants from interfering in any way with the operation and management of the two ships and from picketing them for any purpose and severing and reserving plaintiff's claim for damages for later trial.

In holding that jurisdiction resided in the state courts, the Justice at Special Term relied solidly on the 1957 decision of the Supreme Court in *Benz* v. *Compania Navie Hidalgo, S. A.* (353 U. S. 138), which he said was "squarely on all fours with the instant case". In the *Benz* case, as here, the vessel, a foreign tramp steamer, flew the Liberian flag, had foreign owners, and the crew complement was [fol. 411] composed of foreign nationals. Unlike the fact situation presented here however, the owners of the steamer in the *Benz* case had no office or agents in the United States, and the ship did not receive the major part of its business from American nationals nor visit an American port regularly; and after a single, initial, fairly haphazard contact with an American port the steamer left United States territorial waters and thereafter had no charter commitment to return. Again, unlike the instant case, in which a union has sought directly to organize foreign seamen on a foreign ship to preserve, among other things, American wage and working standards, in *Benz* the unions were interested

primarily in the internal economy of the ship and picketed out of sympathy for a strike of foreign seamen.

As the opinion itself indicates, the *Benz* case had rather special facts:

> "It should be noted at the outset that the dispute from which these actions sprang arose on a foreign vessel. It was between a foreign employer and a foreign crew operating under an agreement made abroad under the laws of another nation. The only American connection was that the controversy erupted while the ship was transiently in a United States port and American labor unions participated in its picketing." (353 U. S. at p. 142)

The compass of the *Benz* holding was recently outlined succinctly in *Marine Cooks & Stewards, AFL* v. *Panama Steamship Co.* (362 U. S. 365). In the latter case the Supreme Court said:

> [fol. 412] "The question in the *Benz* case was whether the Labor Management Relations Act of 1947 governed the internal labor relations of a foreign ship and its foreign workers under contracts made abroad while that ship happened temporarily to be in American waters. The *Benz* case decided that the Labor Management Relations Act had no such scope or coverage and that it accordingly did not preempt the labor relations field so as to bar an action for damages for unlawful picketing under Oregon law." (362 U. S. at p. 369)

The court in this later case was again confronted with the picketing of a Liberian ship, manned by an alien crew. In this situation, however, there was no labor dispute between the ship's employees and the ship's management. The picketing, carried on by an American union, was to protest the loss of AFL-CIO seamen's livelihood to foreign flag ships with substandard wages and conditions. In these circumstances the Supreme Court rejected the District Court's assumption of jurisdiction to issue an injunction on that court's stated ground that the picketing was an "unlawful interference with foreign commerce" and interfered "in

the internal economy of a vessel registered under the flag of a friendly foreign power". This position had been also adopted by the Court of Appeals, in reliance almost entirely on the holding in the *Benz case* (265 F. 2d 780, 786 (9th Cir. 1959)).

While the Supreme Court in *Marine Cooks* expressly bottomed its dismissal of the petition for an injunction on the limitations upon the courts' jurisdiction imposed by the Norris-LaGuardia Act, it gave expression to some [fol. 413] intriguing dictum. In a footnote (p. 371) the court pointed to the special facts present in the *Benz* situation (362 U. S. 365, at pp. 371-372, footnote 12):

> "Unlike the situation in the *Benz* case, in which American unions to which the foreign seamen did not belong picketed the foreign ship in sympathy with the strike of the foreign seamen aboard, the union members here were not interested in the internal economy of the ship, but rather were interested in preserving job opportunities for themselves in this country. They were picketing on their own behalf, not on behalf of the foreign employees as in *Benz*. Though the employer here was foreign, the dispute was domestic. For a thoughtful discussion of the impact of foreign employment upon American labor standards, see *Afran Transport Co.* v. *National Maritime Union*, 169 F. Supp. 416, 1959 Am. Mar. Cas. 326 (holding that the Norris-LaGuardia Act withdrew from Federal District Courts jurisdiction to issue labor injunctions in a labor dispute strikingly like the one here involved). But see *Fianza Cia. Nav. S. A.* v. *Benz*, 1959 Am. Mar. Cas. 1758, 37 CCH Lab. Cas. ¶65,495."

Therefore, in the *Benz* case, not only were there no substantial American contacts with the ship operated under the foreign flag of convenience, such as are present in this case; but the picketing by the unions was evidently viewed as prompted essentially out of sympathy for the objectives of foreign seamen on a foreign boat, and not to better the lot of American sailors. The three domestic [fol. 414] unions, by injecting themselves into this wholly

foreign dispute, placed themselves in the traditionally dangerous position of strangers intermeddling in a family fight.

It has been argued forcefully that the consideration of "international relations", "possibilities of international discord", etc., which so troubled the court in the *Benz* case when contemplating the applicability of the Labor Management Relations Act to foreign ships with foreign crews, are relevant with regard to the rights guaranteed to employees under §7 of the Act but are not relevant with regard to the prohibitions of §8 of the Act. (Comment "*The Effect of United States Labor Legislation on the Flag-of-Convenience Fleet: Regulation of Shipboard Labor Relations and Remedies Against Shoreside Picketing.*" 69 Yale L. J. 498, 516, 523.)

The National Labor Relations Board (NLRB) had in a somewhat similar situation refused to apply the protections of §7 of the Act while enforcing the prohibitions of §8. (Compare *In Re Sailors Union of the Pacific (Moore Dry Dock Co.)*, 92 N. L. R. B. 547 (1950), with *Compania Maritima Sansoc Limitada*, Case No. 20 RC-809 (5/1/50), CCH NLRB Decisions 1950-51, ¶10,081.) Only the dissenter in *Benz* accepted this argument (353 U.S. 138, 147-150). Cf. *I. B. of Teamsters* v. *N. Y., N. H. & Hartford R. R.*, 350 U. S. 155 (1956).)

Even at common law it was recognized that the deck of a visiting ship afforded no sanctuary from certain rights of local government; and that "all things done on board which affected only the vessel or those belonging to her, and *did not involve the peace or dignity of the country, or* [fol. 415] *the tranquility of the port*, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged. . . . " (*Wildenhus's Case*, 120 U. S. 1, 12 [1887]) (emphasis supplied).

The instant case would appear to rest somewhere between the situations posed in *Benz*, on the one hand, and *Marine Cooks*, on the other. Defendants here were picketing not only on behalf of the foreign employees of a foreign ship, as in *Benz*, but on their own behalf, as in *Marine Cooks*. And whatever might be plaintiff's status under international law, by all practical labor relations reckoning its

operations are as singularly domestic as though its ships sailed the Great Lakes.

If the *Benz* rule is applicable to all ships flying flags of convenience, it apparently has not been followed by the NLRB as devoutly as it should have been by the tribunal endowed with "exclusive primary competence" (*San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236, 245) in these matters. In *Peninsular & Occidental Steamship Co.* (120 N.L.R.B. 1097 (1958)) the Board found jurisdiction and distinguished the *Benz* case where "the employer, as we have found above, is a domestic corporation, not a foreign national and the crews include a number of American citizens and resident aliens. Moreover the crews do not sign articles containing conditions of employment prescribed by a foreign government but rather sign old type American articles. As for the ships, their home port is, for all practical purposes at Miami, Florida. Further, though they are registered under foreign laws, they clearly do not operate under foreign laws, the crews, as noted, [fol. 416] signing American shipping articles and the only inspections of these ships being performed by agencies of the United States Government" (120 N.L.R.B. at pp. 1101-2, footnote 7).

In the most recent case the union, evidently unable to establish indirect American ownership of the ships flying flags of convenience, as in *Peninsular & Occidental*, urged instead that jurisdiction should be asserted by the NLRB regardless of the nationality of the owner of the vessel. The Regional Director dismissed the petition for an election, but the Board ordered the petition reinstated to resolve the substantial and material issues presented (*Eastern Shipping Corp. McCormack Shipping Corp. (S. I. U.)*, 12-RC 415 (9/21/59), CCH NLRB Decisions 1959-1960, ¶56,698).

Accordingly, the NLRB apparently does not consider the fact that the employer is a foreign entity operating a ship under the flag of a foreign country as an insurmountable barrier to the assertion of its jurisdiction in labor disputes. For all that appears the Board may take the view that its jurisdiction is proscribed by the *Benz* case only when some preexisting, previously confined shipboard dispute spills onto the dock, where an American union lends a

hand. (Cf. Comment Yale L. J., *op. cit. supra*, p. 521.) Short of that, the Board may take the position that while it will not afford relief under §7 because of possible conflict with settled rules of international law and principles of comity, it will enforce the prohibitions of §8 against an American union which engages in prohibited concerted activity directed against a foreign ship regularly doing [fol. 417] business in a United States port. It must be borne in mind that the Board may maintain jurisdiction if it has the statutory power either to protect or prohibit the activities in issue.

In such event, and at the very least, it can be argued strongly that this controversy involves rights and obligations exclusively within the primary jurisdiction of the National Labor Relations Board, to which under the Labor Management Relations Act both State and Federal courts must defer when conduct complained of in a labor dispute is either protected or proscribed by the Act. The basis and rationale of this policy are stated in *Garner* v. *Teamsters Union* (346 U. S. 485, 490, 491):

> "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confine primary interpretation and application of its rules to a specific and especially constituted tribunal and described a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies. . . . A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law. The [fol. 418] same reasoning which prohibits Federal Courts from intervening in such cases, except by way of review or on application of the Federal Board, pre-

cludes State Courts from doing so. Cf. *Myers* v. *Bethlehem Shipbuilding Corporation*, 303 U. S. 41; *Amalgamated Utility Workers* v. *Consolidated Edison Company*, 309 U. S. 261."

In *San Diego Building Trades Council* v. *Garmon* (359 U. S. 236, 244) the Supreme Court defined the boundaries of judicial action still more sharply, holding that when "an activity is arguably subject to §7 or §8 of the Act, the state as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted" (p. 245). The court stated:

> "At times it has not been clear whether the particular activity regulated by the States was governed by Section 7 or Section 8 or was, perhaps, outside both these sections. But courts are not primary tribunals to adjudicate such issues. It is essential to the administration of the Act that these determinations be left in the first instance to the National Labor Relations Board. What is outside the scope of this court's authority cannot remain within a State's power and State jurisdiction too must yield to the exclusive primary competence of the Board. . . ."

Chapter 7 of Title 29 of the U. S. Code will be searched in vain for language to support the contention that by statutory inhibition the jurisdiction given the NLRB by [fol. 419] the Labor Management Relations Act does not encompass labor disputes involving "foreign" ships. The term "commerce" includes "trade, traffic, commerce, transportation . . . among the several States . . . or between any foreign country and any State . . . or between points in the same State . . . but through . . . any foreign country" (§152(6)). The term "affecting commerce" includes "burdening or obstructing commerce or the free flow of commerce or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce" (§152(7)).

We are told that Congress created the NLRB to provide reasonable measures to prevent the disruption "of inter-

state and foreign commerce" (*Consolidated Edison Co.* v. *NLRB*, 305 U. S. 197, 221-2 (1938)). That the dispute at issue in this case has disrupted "foreign commerce" is beyond argument. The decision in the *Benz* case, relying as it does exclusively on negative legislative history, must be confined rigorously to the fact situation presented by that case. Otherwise, the finding that the Labor Management Relations Act does not apply to "wage disputes arising on foreign vessels between nationals of other countries when the vessel comes within our territorial waters" (353 U. S. at p. 142) would ignore the plain provisions of the Act. Throughout the *Benz* case the court carefully limits the scope of its decision by restrictive language such as "such dispute" and the "circumstances such as those posed here" (353 U. S. at pp. 142, 144).

Accordingly, neither the Act, the Board nor the federal courts have ever held that the plain terms of the Labor [fol. 420] Management Relations Act do not encompass "foreign" shipping. To the contrary, the Board and the courts have indicated that the Act may apply when a union of American workmen takes collective action against a foreign ship in the interest of preserving "the terms and conditions of their employment" by stabilizing "competitive wage rates and working conditions within and between industries" (29 U. S. C. A. §151). Cf. *Afran Transport Co.* v. *National Maritime Union, op. cit. supra; Eastern Shipping Corp. (S. I. U.), op. cit. supra.*

Accordingly, the order denying defendants' motion to dismiss the complaint for lack of jurisdiction should be reversed and the motion granted, and the judgment granting a permanent injunction should be reversed and the complaint dismissed, both reversals on the law and the facts.

STEVENS, J. concurs.

[fol. 421]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

INCRES STEAMSHIP COMPANY, LTD., Plaintiff-Respondent-Appellant,

against

INTERNATIONAL MARITIME WORKERS UNION and SHANNON J. WALL, Defendants-Appellants-Respondents,

and

EDWARD POGOR, JOHN DOE and RICHARD ROE, Defendants.

STIPULATION AS TO EXHIBITS—February 24, 1961

It Is Hereby Stipulated by and between the attorneys for the respective parties hereto that the printing herein of the exhibits in evidence described below be dispensed with and the originals thereof shall be filed with this court upon the filing of defendants-appellants-respondents' brief, except for the exhibit which is noted as having been read into the record at the trial.

Plaintiff's Exhibits

3. Photograph of boat with marking U.M.D. 2.

4. Contract of Incres Steamship Company, Ltd.

[fol. 422] Defendants' Exhibits

D-D1 Picket signs (read into the record).

E. Constitution of International Maritime Workers Union.

Dated: New York, N. Y., February 24, 1961.

Donovan, Leisure, Newton & Irvine, Attorneys for Plaintiff-Respondent-Appellant.

Cooper, Ostrin & De Varco, Attorneys for Defendants-Appellants-Respondents.

[fol. 423]

STIPULATION WAIVING CERTIFICATION OF RECORD TO THE COURT OF APPEALS—February 24, 1961

It Is Hereby Stipulated and Agreed that the foregoing consists of a true and correct copy of the record on appeal to the Appellate Division, First Department, the notices of appeal to the Court of Appeals, the order of modification of the Appellate Division and the judgment entered thereon, appealed from, the majority opinion and the dissenting opinion of the Appellate Division, all of which are on file in the Office of the Clerk of the County of New York; and certification thereof, pursuant to Section 616 of the Civil Practice Act is hereby waived.

Dated: New York, New York, February 24, 1961.

Cooper, Ostrin & De Varco, Attorneys for Defendants-Appellants-Respondents.

Donovan, Leisure, Newton & Irvine, Attorneys for Plaintiff-Respondent-Appellant.

[fol. 423a] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 424] Triple Certificate to foregoing paper (omitted in printing).

[fol. 425]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

INCRES STEAMSHIP COMPANY, LTD., Respondent-Appellant,

v.

INTERNATIONAL MARITIME WORKERS UNION et al., Appellants-Respondents, et al., Defendants.

OPINION—Decided July 7, 1961

Chief Judge DESMOND. Plaintiff Incres Steamship Company, Ltd., is a Liberian corporation owned by Italian stockholders. During seven months of each year it operates two Liberian-registered passenger ships, manned by alien crews signed on in Europe, on regularly scheduled cruises to Caribbean ports, originating at and returning to New York City. Its main office is in London and it has no place of business in Liberia but it has in New York City an office which it shares with a New York corporation (Incres Line Agency, Inc.) owned and controlled by Incres. The New York office is run by its manager who is president of Incres and the New York corporation acts as agent for Incres in booking passengers for the cruises, arranging schedules, and providing supplies, repairs and the like.

Defendant International Maritime Workers Union (IMWU) is an American labor union formed in 1959 by two other American maritime unions, both affiliated with AFL-CIO, to organize and improve job conditions of merchant seamen employed on "flag-of-convenience" ships, that is, ships registered in foreign countries (principally in Liberia, Panama and Honduras) but whose beneficial owners are not otherwise connected with the nations whose flags they use. As the United States Supreme Court observed in *Lauritzen* v. *Larsen* (345 U. S. 571, 587): "It is common knowledge that in recent years a practice has grown, especially among American shipowners, to avoid [fol. 426] stringent shipping laws by seeking foreign regis-

tration eagerly offered by some countries." American seamen's wages are several times as high as those paid by Incres. Beginning in February, 1960 representatives of IMWU began a campaign to organize plaintiff's seamen, going aboard the two vessels when docked in New York City and talking to the crew members. There were fruitless negotiations between Incres and the union. On May 13, 1960 the Incres cruise ship *Nassau* arriving at New York was met by IMWU representatives who, picketing peacefully, carried signs charging unfairness of Incres in refusing recognition to the union and demanding better wages and working conditions for the seamen. Later that day the IMWU pickets persuaded about 100 members of the *Nassau's* crew to leave the ship shortly before her scheduled departure and refuse to obey her captain's orders to return, resulting in a cancellation of the sailing. Two days later when the other Incres cruise ship *Victoria* came into New York harbor she could not dock because the strike-bound *Nassau* occupied the berth. The *Victoria* lay at anchor. While her passengers were being brought ashore on tugs, IMWU representatives arrived in a launch, boarded the tugs and at least for a time persuaded the tug crews to stop disembarking the *Victoria's* passengers. As a result of the picketing and striking, several cruises were cancelled. The union filed with the National Labor Relations Board (NLRB) charges of unfair labor practices which are still pending. Incres began this action in Supreme Court, New York County, and obtained first a temporary, then after trial a permanent, injunction enjoining the union from picketing plaintiff's vessels or urging or encouraging crew members not to work on the vessels. From the beginning the respective parties have taken the same two opposing positions as to which the Appellate Division divided 3 to 2 and which are again urged on us on this appeal. Incres argues, and both courts below held, that defendant's acts were illegal and tortious, and that the New York Supreme Court, not the National Labor Relations Board, had jurisdiction and power to restrain them. The union—and the two dissenting Justices at the Appellate Division—insists that the NLRB has under *San Diego Unions* v. *Garmon* (359 U. S. 236; see *Dooley* v. *Anton*, 8 N Y 2d 91)

exclusive primary jurisdiction since the conduct complained of is at least "arguably" or "potentially" subject to Federal regulation as protected activity or prohibited unfair labor practice under the Labor Management Relations Act (U. S. Code, tit. 29, § 141 *et seq.*). The only real question for us is whether the NLRB or the New York courts have jurisdiction of this controversy or, putting it more accurately, whether there is such doubt as to the applicability of the Federal statute that under the *San Diego Unions* v. *Garmon* "arguably subject" rule (359 U. S. 236, 245, *supra*) the State courts must yield to "the exclusive primary competence" of the NLRB.

[fol. 427] The union, besides asserting the exclusive jurisdiction of the NLRB, argues that its conduct was not unlawful, that the New York courts have no power to enjoin a "maritime tort" and that, in any event, injunctive relief from a New York court is precluded by the "labor dispute" provisions of section 876-a of the Civil Practice Act. We will assume, as did the Appellate Division, that the union is wrong as to all those positions, and go to the real question—jurisdiction. (This court has jurisdiction of the appeal because the Appellate Division made a slight modification of the permanent injunction by changing the language which prohibited picketing the vessels "for any purpose" so as to read for "any such purpose"—that is, a limitation to the particular activity condemned.)

The whole issue may be stated thus: is this dispute "arguably subject" to NLRB jurisdiction or, on the contrary, has it been authoritatively determined that the Labor Management Relations Act is completely inapplicable to labor disputes between nationals of other countries operating ships under foreign flags? The Supreme Court has not definitively made answer to that, but recent judicial and NLRB history, some of it made since the Appellate Division decision here, leaves it disputable that the NLRB has primary jurisdiction. The NLRB has taken jurisdiction of several representation cases as to foreign flag vessels (*Peninsular & Occidental S. S. Co.*, 42 LRRM 1113 [1958], *Eastern Shipping Corp.*, 44 LRRM 1571 [1959], and *West India Fruit & S. S. Co.*, 47 LRRM 1269, [1961]) and in *Navios Corp.* v. *National Mar. Union* (402 Pa. 325 [1960])

the United States Supreme Court (366 U. S. 905 [1961]) denied certiorari as to a Pennsylvania Supreme Court decision which had upheld dismissal of a State court suit on the ground of exclusive NLRB jurisdiction. Both the NLRB holding in the *West India* case and the denial of certiorari in *Navios* came after the Appellate Division's determination of the present case. In retaining jurisdiction in *West India Fruit & S. S. Co.*, the National Labor Relations Board wrote most comprehensively, reviewing practically every aspect of this question. We shall discuss that holding later on in this opinion but we say now that it clearly refutes the allegation in paragraph 17 of the complaint in the present action that the Federal labor relations statute does not "apply to foreign ships with foreign crews in any way".

Incres cites *Benz* v. *Compania Naviera Hidalgo* (353 U. S. 138) and *Marine Cooks* v. *Panama S. S. Co.* (362 U. S. 365) as final authority that the Federal act has no coverage of internal labor relations between a foreign ship and its foreign workers. The union answers correctly that the *Benz* case as explained in the *Marine Cooks Union* opinion related only to a ship which "happened temporarily to be in American waters" (see 362 U. S., p. 369). *Benz* [fol. 428] marked the point of division in the Appellate Division. However, the emphasis in *Benz* on the transient character of the American contacts of the ship there involved makes it impossible to regard the *Benz* holding, as the Appellate Division majority did, as a determination that "Congress did not intend to apply the Federal statute at all to foreign shipping." Left open by the *Benz* case was the question of what shipping is so "foreign" as to be excluded. All agree that foreign registration is not enough (see *Afran Transp. Co.* v. *National Mar. Union*, 169 F. Supp. 416, cited by the Supreme Court in the *Marine Cooks Union* opinion, 362 U. S. 365, 371, *supra*). All agree that Congress has power to intrude on the internal economy of a foreign-registered ship as a condition to permitting entry into American ports or waters (see *Benz* v. *Compania Naviera Hidalgo*, 353 U. S. 138, 144-145, 147, *supra*). The unresolved question is as to whether Congress intended its

statute to apply to labor relations on a ship which while foreign-registered, foreign-crewed and foreign-owned has an American port as one of the two termini of its fixed, regular shuttle service, conducts an important part of its business from a New York City office and has no office at all in Liberia, the country whose flag its vessels fly. Is it possible to argue that those American "contacts" are sufficient for NLRB jurisdiction? The Federal Supreme Court, whatever answer it may finally give as to that, has already told us in the *Garner* v. *Teamsters Union* (346 U. S. 485, 490) and *San Diego Unions* v. *Garmon* (359 U. S. 236, 244, *supra*) cases that the State courts are "not primary tribunals to adjudicate such issues"; that these determinations must "be left in the first instance to the National Labor Relations Board" and, where conduct complained of is "arguably" or "potentially" subject to regulation and the Federal act, "States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board" to avert "state interference with national policy". Under the board's *West India Fruit & S. S. Co.* decision (47 LRRM 1269, *supra*) it is, we think, certainly uncertain whether the board could validly or would take jurisdiction of this controversy. Indeed, a complaint by the union against alleged unfair labor practices by Incres has been pending before the board for a year without any decision as to jurisdiction or merits.

The ship in the *West India Fruit & S. S. Co.* case (47 LRRM 1269, *supra*) was the freighter *Sea Level* flying the Liberian flag and owned by a Liberian corporation but operating as a common carrier between Louisiana and Cuba, and with a Cuban crew. Clearly, held the board, she was engaged in "commerce" under the Federal act, the alleged unfair labor practices "affected" commerce under the act and nothing in the act exempts the maritime industry or seafarers. The "ship-territory" doctrine, said the board, has nothing to do with the territorial reach of the [fol. 429] statute (*Cunard S. S. Co.* v. *Mellon*, 262 U. S. 100, 123) and so there is no "extraterritoriality" to interfere with applying the Federal statute to a foreign ship in American waters. The board concluded that there was

nothing to prevent Congress applying this law to events occurring on foreign-registered ships in domestic waters.

The question, said the board, was whether Congress, empowered as it is to regulate such ships while engaged in our foreign commerce, has by this act chosen to do so. The answer, it said, cannot be all inclusive but must under Supreme Court rulings be found by ascertaining and valuing the contacts between the transactions and the governments whose laws are in competition and by weighing the significance of one or more of those contacts (see *Lauritzen* v. *Larsen*, 345 U. S. 571, 578, *supra*, and *Benz* v. *Compania Naviera Hidalgo*, 353 U. S. 138, *supra*). To warrant application of American law, held the board, not all significant contacts need be American. Neither the "flag law" nor American ownership nor the nonresident status of the crew nor the "internal order doctrine" nor any applicable treaty is necessarily decisive, one way or the other. The board noted that the controversy was between an American union and an American employer, since the owner corporation and its stockholders were American. But the result reached by the board did not necessarily turn on those latter circumstances. The American contacts, held the board, were that the "dispute arose aboard a vessel which engaged exclusively in American foreign commerce, which operates regularly out of an American port, and which is drydocked and regularly provisioned in the United States." The foreign contacts, it said, were "the registry of the vessel and the nationality of the crew which works under foreign articles signed, however, in the United States." The *Benz* case (*supra*), so the board thought, meant no more than that "the Labor Act does not extend to a foreign flag vessel, its foreign owner and foreign crew absent substantial American commerce". While the board's decision mentions the American nationality of the stockholders of the foreign corporation operating the *Sea Level*, no particular point is made of that "contact" and there is no indication that the result would have been different had the stockholders been nationals of other countries. If the board had meant that domestic incorporation or domestic stock ownership was the essential thing, it could have said so. In

Eastern Shipping Corp. (44 LRRM 1571 [1959], *supra*) beneficial ownership of the foreign corporation was shown to be 95% foreign, but the board in a nonfinal decision overruled its Regional Director who had dismissed a representation proceeding because it involved labor relations on a "foreign" ship.

[fol. 430] All the other arguments against NLRB jurisdiction as put forth by Ingres here, including the "national policy" argument, were rejected in the board's opinion in the *West India Fruit & S. S. Co.* proceeding (47 LRRM 1269, *supra*). It is surely "arguable" that the board would exercise jurisdiction in the dispute as to which this injunction was ordered. We should, therefore, hold as we did in *Dooley* v. *Anton* (8 N Y 2d 91, *supra*) that at least until the board refuses jurisdiction the State courts have none.

The judgment should be reversed and the complaint dismissed, with costs to defendants-appellants-respondents in all courts.

Fuld, J. (dissenting). The plaintiff, Ingres Steamship Company, Ltd., owns and operates two ocean-going liners generally engaged in the passenger cruise trade between New York City and Caribbean ports. In the spring of 1960, the defendant Maritime Workers Union organized, picketed and struck those vessels, disrupting their operations. The plaintiff thereupon instituted this action for injunctive relief and damages. The court at Special Term, denying a motion made by the defendants to dismiss the suit for lack of jurisdiction, granted the plaintiff the broad injunction which it had sought. The Appellate Division, though it agreed with all that the trial court had decided, modified the resulting judgment so as to limit the injunction "to the condemned [illegal] activity * * * presented in this case". Both plaintiff and the defendants appeal to us as of right.

We are called upon to construe the National Labor Relations Act, for the jurisdiction of the courts over the subject matter of this action depends upon whether the National Labor Relations Board has jurisdiction under that statute. If the Board has such jurisdiction, then, the courts have no authority to act. More specifically, the question

presented for decision is whether the Act applies to a controversy affecting a foreign (Liberian) flagship—engaged in foreign commerce bringing it to and from United States ports for short stays—which is 100% owned and controlled by foreign nationals and manned by a foreign crew, recruited and hired in the ship's home port in Italy and serving under foreign articles entered abroad.

In our view, the answer is clearly in the negative. Indeed, as Justice BREITEL observed in his comprehensive opinion for the Appellate Division, such a conclusion finds strong support in recent decisions of the Supreme Court. (See *Benz* v. *Compania Naviera Hidalgo*, 353 U. S. 138; *Marine Cooks* v. *Panama S. S. Co.*, 362 U.S. 365; see, also, *Lauritzen* v. *Larsen*, 345 U. S. 571.) "Our study of the Act", wrote the court in the *Benz* case, "leaves us convinced that Congress did not fashion it to resolve labor disputes between nationals of other countries operating ships under foreign laws. The whole background of the [fol. 431] Act is concerned with industrial strife between American employers and employees" (353 U. S. at pp. 143-144).

The circumstance that there was here substantial continuing American foreign commerce and that the plaintiff had a New York corporation to act as its American agent is not sufficient to render inapplicable the rationale underlying the *Benz* decision and vest the National Labor Relations Board with jurisdiction. All-important in the case before us is the fact that the vessels were owned and controlled by Italian nationals and that their home port was, for all essential purposes, in Genoa; in addition, it might be noted, their crews, entirely alien, consisted largely of Italians who had signed on in Italy under contracts made abroad. In our judgment, if the National Labor Relations Act were to be held to cover the foreign-owned ships here involved simply because they dock in New York City and employ a New York corporation as their American agent, it would follow that the Act applies to give the board jurisdiction over controversies involving seamen on board the great fleets of foreign flag and foreign-owned passenger and cargo vessels while engaged in trips between the Port of New York and the foreign countries.

It is hardly necessary to observe that in terms of comity between nations such a result could not help but have a disastrous effect. When in the *Benz* case the argument was advanced as to the Act's applicability to foreign-owned ships, the Supreme Court expressed its concern in these words: "For us to run interference in such a delicate field of international relations there must be present the affirmative intention of the Congress clearly expressed. It alone has the facilities necessary to make fairly such an important policy decision where the possibilities of international discord are so evident and retaliative action so certain. We, therefore, conclude that any such appeal should be directed to the Congress rather than the courts" (353 U. S., at p. 147). Indeed, in *Lauritzen* v. *Larsen* (345 U. S. 571, *supra*), the court had earlier remarked that "in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application of our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction" (p. 582).

We will not impute to Congress—unless the intention is clearly expressed (cf. *Foley Bros.* v. *Filardo*, 336 U. S. 281, 285-286)—a concern to deal with the labor relations of alien seamen on foreign flag vessels, owned by foreign nationals, throughout the world or even while they are in American waters. The fact that our American laws apply to crews, [fol. 432] no matter what their nationality, employed on American-owned vessels does not militate against our conclusion. It is the proper concern of Congress in passing labor laws to regulate and control conditions on American ships while they are in American waters, as well as while they are on the high seas and in foreign ports.

A completely different case is presented where the ship, flying a foreign flag of convenience, is actually owned and controlled by American nationals. In such a case—and this is the sort of case which is relied upon to support the argument and the conclusion that the National Labor Relations Act has given the board jurisdiction (see, e.g., *West India Fruit & S. S. Co.*, 130 NLRB No. 46, 47 LRRM 1269;

Peninsular & Occidental S. S. Co., 120 NLRB 1097, 42 LRRM 1113; *Navios Corp.* v. *National Mar. Union*, 402 Pa. 325, cert. den. 366 U.S. 905)—the ship may, in a very real sense, be regarded as sufficiently "American" to justify the invocation of the Federal statute.[1]

It has been urged that, even though it may ultimately be decided that the National Labor Relations Act does not apply to cover the controversy here involved, the pre-emption principles enunciated by the Supreme Court require that this matter be initially presented to the National Labor Relations Board. (See, e.g., *San Diego Unions* v. *Garmon*, 359 U. S. 236, 244-245; *Dooley* v. *Anton*, 8 N Y 2d 91.) This is clearly not a *Garmon* or a *Dooley* type of situation in which the courts must yield to the exclusive authority vested in the National Board over conduct arguably an unfair labor practice or protected activity, under the Act. If there is "arguability" here, it is not as to whether there was an unfair labor practice or protected activity, but rather as to the very scope and reach of the Federal statute itself. In other words, as we have already stated, the question here is whether the Act applies at all to a strike or controversy arising out of the organization of the crew of a foreign flag vessel, owned and controlled by foreign nationals and manned by a foreign crew recruited abroad and serving under foreign articles executed abroad. [fol. 433] In point of fact, in the *Benz* case (353 U. S. 138, *supra*), the Supreme Court actually passed upon the issue whether the Act applied to the foreign flagship there involved. Such a determination could not have been made if the pre-emption doctrine were applicable, since that

[1] There can be no doubt that in the cases cited the operative fact was ownership by American nationals. Thus, in the *West India* case (130 NLRB No. 46), not only does the board's prevailing opinion remark and stress again and again the vessel's American ownership (e.g., pp. 3, 15, 24, 25, 27, 32), but the dissenting opinion in so many words notes that the majority "have determined that, pursuant to Section 2 (6) and (7), the jurisdictional reach of the Act extends to the operations of American shipowners who register their vessels with, and fly the flags of, foreign nations, and that the policies of the Act will be effectuated by asserting jurisdiction over these shipowners and their operations" (p. 43).

doctrine precludes federal courts—including the Supreme Court—as well as state courts, from taking jurisdiction over activities which arguably involve an unfair labor practice or protected conduct. (*See San Diego Unions* v. *Garmon*, 359 U. S. 236, 244-245, *supra*; *Plumbers' Union* v. *Door County*, 359 U. S. 354.) But courts, neither state nor federal, need step aside to permit the National Labor Board to pass upon questions regarding the scope and coverage of the Act. The board has no special competence in this area, and questions concerning jurisdiction are not its exclusive concern.

In sum, therefore, it is our opinion that the National Labor Relations Act does not apply to a foreign flagship owned by foreign nationals, that the board does not have jurisdiction and that such a determination may in the first instance be made by a state court.

As to the further contention advanced by the defendants that section 876-a of the Civil Practice Act bars issuance of an injunction in this case, it is necessary merely to say that, since, as found by the courts below, the defendants' conduct was for an illegal purpose and the means employed by them to accomplish that purpose unlawful (see, e.g., *Southern S. S. Co.* v. *Labor Bd.*, 316 U. S. 31, 38 *et seq.*; *Simpson* v. *Hamburg-Amer. Line*, 1939 A. M. C. 1469, 1480), the injunction issued by Special Term, as modified by the Appellate Division, may not be successfully attacked as impermissible. (See, e.g., *Goodwins, Inc.* v. *Hagedorn*, 303 N. Y. 300, 305-306; *Dinny & Robbins* v. *Davis*, 290 N. Y. 101.)

We would affirm the judgment appealed from.

Judges Dye, Froessel and Foster concur with Chief Judge Desmond; Judge Fuld dissents in an opinion in which Judge Burke concurs and in which Judge Van Voorhis concurs in the following memorandum: I concur in the dissenting opinion by Judge Fuld except that I do not reach the question whether the same result would obtain in case of vessels of foreign registry but domestic ownership.

Judgment reversed, etc.

[fol. 434]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

State of New York, ss.:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 7th day of July in the year of our Lord one thousand nine hundred and sixty-one, before the Judges of said Court.

Witness,

The HON. CHARLES S. DESMOND, Chief Judge, Presiding.
RAYMOND J. CANNON, Clerk.

Remittitur July 7, 1961.

[fol. 435]

INCRES STEAMSHIP COMPANY, LTD., Respondent-Appellant,

vs.

INTERNATIONAL MARITIME WORKERS UNION & ANO.,
Appellants-Respondents,

and

EDWARD POGOR, & ORS., Defendants.

REMITTITUR—July 7, 1961

Be it Remembered, That on the 11th day of April in the year of our Lord one thousand nine hundred and sixty-one, International Maritime Workers Union & ano., the appellants-respondents in this cause, came here unto the Court of Appeals, by Cooper, Ostrin & De Varco, their attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Incres Steamship Company, Ltd., the respondent-appellant in said cause, afterwards appeared

in said Court of Appeals by Donovan, Leisure, Newton & Irvine, its attorneys, and also filed a Notice of Appeal.

Which said Notices of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

[fol. 436] Whereupon, The said Court of Appeals having heard this cause argued by Mr. H. Howard Ostrin, of counsel for the appellants-respondents, and by Mr. Breck P. McAllister, of counsel for the respondent-appellant, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is reversed and the complaint dismissed, with costs to the defendants-appellants-respondents in all courts.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

[fol. 437] Wherefore, it is considered that the said judgment be reversed &c., as aforesaid.

And hereupon, as well the Notices of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

Raymond J. Cannon, Clerk of the Court of Appeals of the State of New York.

Clerk's Certificate to foregoing paper (omitted in printing)

[fol. 438]

At a Special Term, Part II of the Supreme Court of the State of New York, held in and for the County of New York at the County Courthouse in the City of New York on the 7th day of August, 1961.

Present: Hon. Birdie Amsterdam, Justice.

7187/1960

Incres Steamship Company, Ltd., Plaintiff,

—against—

International Maritime Workers Union, Shannon J. Wall, Edward Pogor, John Doe and Richard Roe, Defendants.

Order Making Judgment of Court of Appeals the Judgment of Supreme Court—August 7, 1961

The above-mentioned defendants-appellants-respondents having appealed to the Court of Appeals from the judgment of the Appellate Division of this Court, First Department, entered on August 4, 1960 in the office of the Clerk of New York County, and the above-mentioned plaintiff-respondent-appellant having appealed to the Court of Appeals from a part of said judgment, and the Court of Appeals having heard said appeal and ordered and adjudged that the judgment so appealed from be reversed and the complaint dismissed and judgment entered for the defendants-appellants-respondents with costs in all courts, and the remittitur from the Court of Appeals having been filed in the office of the Clerk of New York County.

Now, on motion of Cooper, Ostrin & De Varco, attorneys for defendants-appellants-respondents,

It is Ordered that the said judgment of the Court of Appeals be, and the same hereby is, made the judgment of [fol. 439] this Court; and that the judgment entered herein on August 4, 1960 be, and the same hereby is, re-

versed, and that a judgment of this Court be entered herein reversing said judgment with costs in all courts to the defendants-appellants-respondents.

Enter

Birdie Amsterdam, J.S.C.

Filed Aug. 8, 1961, New York County Clerk's Office.

[fol. 440]

In Supreme Court of the State of New York

County of New York

Incres Steamship Company, Ltd., Plaintiff,

—against—

International Maritime Workers Union, Shannon J. Wall, Edward Pogor, John Doe and Richard Roe, Defendants.

Judgment—August 18, 1961

The above-named defendants having appealed to the Court of Appeals from a judgment of the Appellate Division of this Court, First Department, entered in this action on August 4, 1960, affirming and modifying in part the judgment in favor of the plaintiff against the defendants heretofore entered herein in the office of the Clerk of New York County on June 10, 1960; and the above-mentioned plaintiff having appealed to the Court of Appeals from said modification of said judgment, and the Court of Appeals having heard said appeals; and ordered that the judgment so appealed from be reversed and the complaint dismissed with costs in all courts, and the remittitur from the Court of Appeals having been filed in the office of the Clerk of New York County and the order having been entered thereon making the order and judgment of said Court of Appeals the order and judgment of this Court;

Now, on motion of Cooper, Ostrin & De Varco, attorneys for the defendants herein, it is hereby

Adjudged that the said judgment entered herein on August 4, 1960 be and the same hereby is reversed and the complaint dismissed; and it is hereby

[fol. 441] Adjudged that the defendants recover of the plaintiff the sum of $2,585.84 costs as taxed, and that the defendants have execution therefor.

Dated: New York, N. Y., August 18, 1961.

James McGurrin, Clerk.

[fol. 442]

SUPREME COURT OF THE UNITED STATES

No. 469—October Term, 1961

INCRES STEAMSHIP COMPANY, LTD., Petitioner,

vs.

INTERNATIONAL MARITIME WORKERS UNION, et al.

ORDER ALLOWING CERTIORARI—December 4, 1961

The petition herein for a writ of certiorari to the Court of Appeals of the State of New York is granted, and the case is set for argument immediately following No. 166.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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